United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

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76-7519

United States Court of Appeals

For the Second Circuit.

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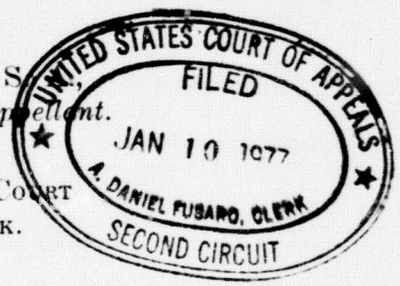
ANTHONY MUNOZ,

Plaintiff-Appellee,

against

FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendant-Appellant.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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WITNESS FOR PLAINTIFF:

Munoz, Anthony:	
Direct	8a
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WITNESS FOR DEFENDANT:

McGann, Edward:	
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EXHIBITS.

DEFENDANT'S EXHIBITS:

		Admitted Page	Printed Page
A.	Sketch of work area of accident .	47a	128a
J.	Port Log		129a
K.	Final cargo stowing plan . . .	83a	132a
O.	Hatch tallies, dated 11/5/73 . .	101a	151a
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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

ANTHONY MUNOZ,

Plaintiff-Appellee,

-against-

FLOTA MERCANTE GRANCOLOMBIANA, S. A.,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

DATE	NR.	PROCEEDINGS
05-22-75	-1-	Filed complaint and issued summons.
6-03-75	-2-	Filed summons with marshal's return served-- Grancolom Biana of NY, Inc. by Ritter on 5-27-75
07-18-75	-3-	Filed ANSWER of deft.
10-16-75	-4-	Filed pltf. answer to interrog. RCG
01-26-76		PRE-TRIAL CONFERENCE HELD by Mag Jacobs
05-10-76	=	Filed Pre-Trial Conf. held by Mag. Jacobs.
06-01-76	=	P.T.C. held - Mag. Jacobs
07-13-76	5	Filed defts notice of examination of E. Vela and H. Lorenti on 7-20-76 subp. issued.
7-26-76	---	Jury trial begun.
7-27-76		Jury trial contd.
7-29-76		Jury trail contd. & concluded. Jury verdict for pltf. in amt. of $13,000. judgment to be entered accordingly. Defts. motion to set aside verdict --decision is reserved.
08-20-76	6	Filed OPINION #44994..that the motion to set aside verdict is denied. Weinfeld, J. m/n
09-01-76	7	*Filed Transcript of record of proceedings, dated* 7-26, 27, 29, 1976
09-02-76	8	Filed deft's request to charge.
09-02-76	9	Filed deft's suppl. request to charge
09-02-76	10	Filed pltf's request to charge
09-02-76	11	Filed trial memorandum on behalf of Flota Mercante Grancolumbiana
09-02-76	12	Filed deft's suppl. trial memorandum
09-02-76	13	Filed plaintiff's trial memorandum
09-02-76	14	Filed deft's post trial brief.
09-02-76	15	Filed pltf's brief in opposition to deft's motion for summary judgment.
10-05-76	16	Filed Judgment #76,893; ordered that plaintiff have judgment against the deft. in the sum of $13,000.00 - Weinfeld, J. -- Judgment entered - CLK
10-18-76	17	Filed deft's notice of appeal to the USCA from judgment entered (document #16) - m/copy.

DECISION.

The defendant's motion for a directed verdict was made, in part, on the ground that "there is no evidence whatsoever of any open and obvious danger. This was a latent defect." The Court instructed the jury on the "latent defect" theory of law. The instruction was:

> "[plaintiff's] claim is that the unevenness of the path to the escape hatch along which he walked and the use of separation paper to cover cargo constituted a dangerous condition. Basic to plaintiff's recovery is a finding that in fact a dangerous condition existed. If such a condition existed, not readily apparent to persons exercising reasonable care and if the ship owner had actual or constructive notice of the dangerous condition, then the ship owner was required to give such persons warning of the danger and to correct the condition." (1)

The evidence is sufficient to support the jury's finding under the instruction to which no exception was taken.

---

(1) See Rice v. Atlantic Gulf & Pacific Co., 484 F.2d 1318 (2d Cir. 1973); Frasca v. Prudential-Grace Lines, 394 F. Supp. 1092, 1097 (D. Md. 1975); Scalafani v. Moore McCormack Lines, Inc., 388 F. Supp. 897 (E.D.N.Y. 1975); Crowshaw v. Koninklijke Nedlloyd, B.V. Rijswijk, 388 F. Supp. 1224, 1229 (D. Ore. 1975); Quadrino v. S.S. Theron, 323 F. Supp. 1037 (S.D.N.Y. 1970), aff'd, 436 F.2d 931 (1971).

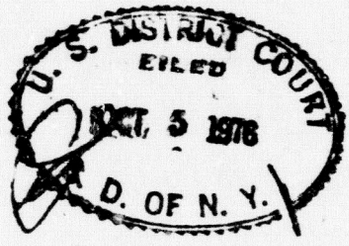
DECISION

The motion to set aside the jury's verdict is denied.

Dated: New York, New York
August 20, 1976

EDWARD WEINFELD
United States District Judge

JUDGMENT.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY MUNOZ

Plaintiff

-against-

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

Defendant

75 Civil 2409 (EW)

JUDGMENT
#76,813

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Edward Weinfeld, United States District Judge, and a jury, on July 26,27 and 29, 1976, and a jury, and the Court having submitted the attached questions to the jury, and the jury having answered the said questions, and the jury thereafter having returned a verdict in favor of the plaintiff. Defendant having moved the Court to set aside the verdict, and the Court having reserved decision, and the Court thereafter having handed down its opinion denying the motion to set aside the verdict, it is,

JUDGMENT

ORDERED, ADJUDGED and DECREED: That plaintiff ANTHONY MUNOZ have judgment against defendant FLOTA MERCANTE GRANCOLOMBIANA, S.A., in the amount of $13,000.

Dated: New York, N.Y.
October 5th, 1976

Edward C. [redacted] U.S.D.J.

JUDGMENT ENTERED - 10/6/76

~~APPROVED~~

Raymond F. Burghardt
[redacted] Clerk

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ANTHONY MUNOZ, :

Plaintiff. : 75 Civ. 2409 (E.W.)

- against - : NOTICE OF APPEAL

FLOTA MERCANTE GRANCOLOMBIANA, S.A., :

Defendant. :

----------X

Notice is hereby given that FLOTA MERCANTE GRANCOLOMBIANA, S.A., defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 6th day of October, 1976.

DATED: New York, New York
October 15, 1976

GIALLORENZI & STILES
ATTORNEYS FOR DEFENDANT

BY _____
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supposed to do properly, that we turned that area over when we come into port to the stevedores. They have men down there that are in charge; they know how to load cargo and discharge cargo properly, and if he was hurt it was for something that was nobody's fault or it was Universal's fault for maybe not stowing properly but it was not the ship's function to do this.

The ship doesn't have the expertise and you know he should not recover. You know. It's hard to turn somebody out of court suing a company and asking for money. I am here saying that's what I am asking you to do. I know you are going to listen. I don't think this is going to be a lengthy case. I know you are going to put the facts together and come back with what you consider is a fair verdict and that's all anybody can ask.

I thank you.

THE COURT: Please call the first witness.

A N T H O N Y M U N O Z, the plaintiff herein, after being first duly sworn by the clerk, testified as follows:

DIRECT EXAMINATION

BY MR. DOYLE:

Q How old are you, Mr. Munoz?

A 41.

Q Are you employed?

A Yes, I am.

Q By whom are you presently employed?

A Universal Terminal Stevedores.

Q What is your job?

A Excuse me?

Q What is your job?

A I am a longshoreman.

Q Universal is what they call a stevedore?

A That's correct.

Q On November 6, 1973, were you also employed by Universal?

A Yes, I was.

Q And were you employed as a longshoreman on that day?

A Yes.

Q How many years have you been working as a longshoreman?

A On and off, about 15. Approximately 10 straight. 10 years straight; on and off, 15 years.

Q On November 6, 1973, did you have any particular job as a longshoreman?

A Yes, I was a hold man.

Q Would you explain to the court and the jury what

the duties of a hold man are?

A Well, the duty of a hold man are usually general. General work. It's mostly storing cargo, lifting cargo, working, three other fellows down the hold like this particular day or I was working with eight others --

Q Seven other fellows besides yourself?

A It's mostly all lifting and storing cargo.

THE COURT: Mostly all what?

A Lifting and storing cargo.

Q Does a hold man work down in the hold of a vessel?

A Yes, he does.

Q Do you have other longshoremen that work up on the deck?

A Yes, we do.

Q Are they called deck men?

A They are deck men, correct.

Q You have other longshoremen working on the dock?

A Yes.

Q And they are called dock men?

A Dock men; that's correct.

Q On this particular day, November 6th, you were working as a hold man down in the vessel?

A As a hold man, that's correct.

Q Do you remember the name of that particular vessel?

A Cyustad Ibaca or something like that. I cannot pronounce it.

Q Was it a Grancolombiana vessel?

A I believe so.

Q What time did you report to work on November 6th?

A Approximately around 9:00 in the morning.

Q And where was the vessel?

A It was docked at Pier 3, Port Authority Brooklyn.

Q And was this the first time that you had gone on that particular vessel?

A Yes.

Q This was the first day you actually started working on it?

A Yes.

Q Were you a member of a regular gang when you went on the vessel on November 6th at approximately 9 a.m.?

A You mean that particular day?

Q I beg pardon?

A That particular day?

Q On that particular day, November 6th.

A No, I was an extra man that day.

Q What do you mean by an extra man?

A Well, in other words, I work in a steady gang. We are the number 6 gang on that pier. There is five steady gangs. So what they did was they brought in five steady working gangs and then the extra two gangs, number 6 and number 7 gang, the fellows feel they want to work, you know, that extra day or whatever have you, they go to the hiring hall and they shape, which is what I did.

And then the hiring agent there, you know, he hires according to the men he needs.

Q Did you work with the group of men when you reported at 9:00 on November 6th?

A Yes.

Q Was that group already working?

A Yes.

Q What time had they started, if you know?

A I imagine 8:00. I don't even know.

Q Is 8:00 the customary time for a longshoring gang to start?

A Yes.

Q Had you come a little later because you had come from the hall?

A Correct.

THE COURT: What time did you start to work?

THE WITNESS: Excuse me, your Honor?

THE COURT: What time did you start to work?

THE WITNESS: Well, if I wasn't coming from the hall, I would generally start 8:00.

THE COURT: On this day, what time did you start?

THE WITNESS: 9:00.

THE COURT: Members of the jury -- off the record.

(Discussion off the record.)

BY MR. DOYLE:

Q When you went to work at 9:00, this gang that you were working with, you had not worked steadily with them before; had you?

A I worked with the gang on and off but never steady.

Q Did somebody give you orders where to report to when you got to the pier?

A Yes.

Q Who did that?

A Upon reaching the pier we have to go to the time-keeper's office and give him our --

Q What did he tell you to do?

A Well, I checked in with him and he assigned me to No. 3 hatch there, gang.

Q Did you then proceed to go onto the ship?

A Yes, I did.

Q And did you go down into No. 3 hatch?

A I went to the ship, I asked the hatch boss where I had to go and he told me down the lower hold No. 3 hatch.

Q Do you know the name of the hatch boss?

A Nicholas Simeone.

Q Did you work with him before?

A Yes, I did.

Q When you went into No. 3 hatch, what part of the hatch did you go to?

A I went up on the ship, I went to the forward end of the ship.

Q Is that where No. 3 was?

A That's correct.

Q And did you go down into No. 3?

A Yes, I did.

Q What part of No. 3 did you go to? I am referring to the lower part of the hatch or the middle or the upper.

I recall I went down to the lower tween deck of the hatch and there there was a sort of a tank which separates the hatch from the offshore side to the port side.

Q You say the lower tween deck, is that the deck above the lower hold?

A Yes.

Q The lower hold is the very bottom of the ship?

A That's correct.

Q And you were one deck above that?

A One deck above that.

Q And you said there was a tank there separating -- what?

A Sort of like a tank or partition. It was like a steel -- separating the two hatches. In other words, the two --

Q Separating one part of the hatch from the other part?

A That's correct.

Q Now, did you proceed to go to work when you got down to the lower tween deck?

A Well, when I got down to the lower tween deck I couldn't get down to the lower hold because the escape hatch which ordinarily we used to go down to the hold was covered with cargo.

Q When you went down what was your intention, to go down to the lower hold?

A Yes.

Q How far down did you go?

A As far as the lower tween.

Q What did you do then?

A Then I asked the fellows down the hold how does one get down there.

Q Were they down on the lower hold working?

A Yes, they were.

Q Did you speak down to them?

A Yes, I did.

Q What did you say to them?

A I asked them how does one get down there.

Q What did they tell you, if anything?

A They emphasized like go to the mid ship, there was a wooden ladder coming from the upper -- the lower tween to the lower hold.

Q Was that at No. 3?

A Yes, it was.

Q Did you go down that ladder?

A Yes, I did.

Q What did you do when you got to the end of the ladder?

A When I got to the end of the ladder, I was on top of cargo.

Q What did you do then?

A Then I walked over and I had to jump down about three feet to the square where they were working.

Q Now, was the gang that was already working there

loading or unloading cargo?

A When I got there they were loading.

Q Was it any particular type of cargo?

A It was these sort of round reels like.

Q How big were these reels?

A I'd say they were about, in height standing up on edge.

Q How high?

A A man's height. My height.

Q About your height?

A Shoulder height.

Q Were they heavy?

A Yes, they were.

Q Were they the type of reels you sometimes see in the street used by Con Edison?

A Well, I would say they were round like that but I don't think they were that big.

Q Did they look something like that?

A I guess so.

Q Well, describe the reel for us, or the reel that you were working with.

A Well, they were round, they were completely round in diameter and when they came down they had the wire or whatever it was, I think it was the wire had come down

The wire then when you landed it you had to move this particular wire back so that you could make the gangway man take a little string -- being that it was heavy we couldn't push it over and he would have to take a loose string and take the weight off the floor.

Then we had everybody put their weight on it and we had the position to place it, we tell him to come back and as he came back we would push and these particular reels would be falling in place.

We were merging them more or less, you know, one against the other so that they wouldn't move.

Q These reels were coming from the dock, were they?

A I believe so, yes.

Q And they were being brought onto the ship by the ship's winch, if you know?

A That's correct.

Q And then they were brought down into No. 3 hold?

A The No. 3 hold.

Q And you mentioned the gangway man. What does he do?

A The gangway man gives the deck man the signals.

Q Is he standing up on the main deck up above?

A Well, on this particular day ordinarily they would.

but on this particular ship you needed more deck for the simple reason there was too much water involved in between the hatches and the gangway man couldn't see down the lower hold to give the winch man the signals.

Q So his function was to watch you men working there and then give signals to the winch man?

A Right; that's correct.

Q The winch man then would move these reels in accordance with the signals that he gave?

A That's correct.

Q What part of the hatch was this operation being done in?

A This was in what they call the square of the hatch.

Q What is the square of the hatch?

A Well, that's when the particular -- you are working right in the square, there is no wings involved on the ship. In other words, you are not inside the ship working under the coaming where no one could see you. You are actually out in the square of the hatch. Whether it's the after end or the forward end but you are in the square.

Q Is the square of the hatch where the hatch boards cover up the opening?

A Excuse me?

Q Is the square of the hatch where the hatch boards cover up the opening to the hatch?

A Yes.

Q Now, from the main deck all the way down to the lower deck, you have various --

A Various tiers, decks.

Q -- levels; do you?

A Yes.

Q And they are closed off at various points with hatch boards or hatch covers?

A Right. In other words --

Q How big is the square of the hatch in size?

A In size?

Q Roughly.

A Well, some ships --

Q 20 feet by 20 feet or 30 feet by 30 feet?

A Some ships come down there; they get a 40 foot container right in the square.

Q So it's a fairly large opening?

A Yes.

Q And then when they have all the cargo in, do they place boards across the hatch or a hatch cover across the hatch covering up this opening?

A You mean when the particular hatch is loaded?

Q Yes.

A And it's completed?

Q Yes.

A What they generally do is they cover it and they go up to the next deck or wherever they are going to load and discharge it.

Q And they put on the hatch boards, do they?

A Hatch boards or steel doors.

Q Whatever it might be to cover the opening?

A That's correct.

Q That opening,that's what you call the squre of the hatch?

A That's correct.

Q And that opening goes all the way down from the top of the main deck all the way down to the lower hold?

A That's correct.

Q And you have a series of openings going down, do you, from the different levels?

A Yes. On this particular ship it did.

Q Was there any other cargo down there that had been loaded that was not in the square of the hatch?

A Yes, there was.

Q And where was that cargo?

A That was at the after end in the midship of the

ship.

Q Was that cargo already there when you arrived at 9:00?

A Yes, it was.

Q Where did you say this was, the after end?

A It was the after end in the midship.

Q Will you describe that to us? What does that mean, the after end in the midship?

A Well, in other words, where we were working was the square of the hatch but going towards -- in other words, if two hatches were to double up at the one turn around and tell you all right No. 3 gang work the forward end -- if they can double up they can double up the gang on one particular hatch, making one work the forward end of the ship and one work the back end of the ship.

Then at the mid point, that's what we call the midship.

Q Is that where the square of the hatch would be, the midship?

A Yes, well, there was a square there, too.

Q Now, this other cargo. Had you had anything to do with loading that or putting it on the ship?

A No, I didn't.

Q Do you know where that other cargo came from?

A No, I don't.

Q When you were working with these reels in the square of the hatch, did something happen to one of the reels?

A Excuse me?

Q While you were working with the reels in the square of the hatch, did anything happen to one of the reels as you were trying to load it?

A Oh, yes. The particular reel came down. They landed it. We went to bot it over, what we call bot it over, it means flip it over and we got too close to it as it flipped over it got caught on the other reel in front of it.

In other words, we were lining them up as we flipped it over, it was a little too close. Sometimes you got to play with it and it got caught on top of another reel.

Q How many men were involved in trying to flip it over?

A Myself and three other men.

Q Were there other men working down in the hold besides you four?

A Yes, there was another four men on the opposite side.

Q Were they on the other side of this partition or whatever you called it before?

A Right. They were on the other side but we couldn't see each other.

Q What was this thing that you called that was between you and the other group?

A I don't know if there was a partition, a tank or what.

Q A tank you called it?

A Sometimes it's a tank or it's a separation like separating one hatch from another.

Q What, if anything, did you do when this reel tipped over, or tipped so that you couldn't place it properly?

A Well, I looked around and I asked for a -- we were pushing it so --

THE COURT: You looked around for what?

THE WITNESS: We were going to push it over and it got caught so we were looking around for a crowbar, says to anybody, youze got a crowbar.

Q Was there a crowbar down there?

A Yes, there was.

Q Did you know it was there or did somebody tell you?

A No, I don't think it was there.

Q Did somebody tell you it was there?

A Right.

Q Where did they tell you the crowbar was?

A They emphasized the bar was on top of this cargo.

Q How far away from you was this crowbar from where you were standing when you were working on the cargo, on the reel?

A From where I stand to walk over to the crowbar figure six, seven feet.

Q Six or seven feet?

A Yes.

Q Was there any pathway for you to get from where you were in the square of the hatch where the reel was over to where the crowbar was?

A Yes, there was.

Q And would you describe this pathway for us?

A Well, I cannot actually say it's a real pathway. It appeared to be. In other words, it was leading up to this escape hatch.

Q You say leading up. In what way leading up?

A Well, it was like a step ladder, you know.

Q What was it composed of,this step ladder?

A It was composed -- I imagine it was all different kinds of cargo. Cartons, cases, bags. And then there was separation paper.

Q And on either side of this path was there any other cargo?

A Yes, there was.

Q How high was that cargo on either side?

A All the way up.

Q All the way up to what?

A The escape hatch.

Q How high up would that be?

A In other words, it started taping up, as I said, as a step ladder.

Q It went right up to the ceiling of the vessel at that point?

A Practically.

Q How far away was the --

MR. DOYLE: Withdraw that.

Q What was the purpose of this path that you have been describing?

A Well, the purpose of the path is if something should happen you have to have a way to get out of the ship.

Q Was this path leading to the escape hatch?

A Yes, sir.

Q How far away was the escape hatch from where you were standing again by the reel in the square of the hatch?

A I'd say a good 15 feet.

Q And was this crowbar alongside the path as you would go towards the escape hatch?

A Yes, it was.

Q And I believe you said it was about six or seven feet away from you in the center of the hatch?

A Right.

Q The square of the hatch, is that correct?

A That's right.

Q Would you explain to the court the purpose of this pathway leading to the escape hatch?

A Well, like I said the purpose of the escape hatch is in the event something happens, someone should get sick or a fire should break out or anything. You have to go -- that's the only way to get out of the ship, down the lower hold.

Q Did you walk a straight line along this path in order to get to the escape hatch?

A I wouldn't say a straight line.

Q Could you walk erect to get to the escape hatch?

A Erect?

Q Erect. Could you stand up and walk as I am walking towards you now?

A Oh, no. No.

Q What would you have to do to use this pathway?

A You would have to -- in a crouching position, for this particular one it was in a crouching position. You have to crawl. And as you got up to go to the ladder you have to go on your belly.

Q When you were told where the crowbar was, what did you do?

A I turned around, I looked where the crowbar was.

Q Did you see it?

A Yes.

Q And where was it?

A It was up on top of the cartons. Or carton.

Q Where was the carton with respect to this pathway?

A Excuse me?

Q Where was the carton with respect to the pathway?

A They were in the forward end.

Q Was the carton near the pathway, alongside it or what?

A No, I had to walk up to it.

Q Were you walking upward along the pathway?

A Yes, to get the bar.

Q And could you reach the bar from the pathway?

A From the pathway?

Q Yes.

A Yes, once I went up the pathway, just get up there and pick it up. Went down and pick it up.

Q What would you have to do? Reach up for it or would it be right in front of you or what?

A I had to step up to this pathway that's why I couldn't reach the crowbar.

Q This pathway you have said was not level?

A It appeared to be.

Q Well, I am trying to get as clear a picture as I can, Mr. Munoz, as to what it actually looked like. You said something before about it being a step ladder type of thing. You had to walk up the pathway?

A As I say, it was built up.

Q Was it continuously built up?

A Yes, went right up.

Q So it wasn't level at any point, was it?

A No.

THE COURT: When you are talking of it, what are you talking about?

THE WITNESS: The path.

THE COURT: The pathway was built on an incline then, is that it?

THE WITNESS: Yes.

Q Now, this incline, was this smooth or would part of the cartons come out sort of form steps of some sort?

A Yes, some of the cartons, the cases would be sticking out a little bit. In other words, the height.

Q Will you tell us what happened to you as you were going along this pathway to get the crowbar?

A When they says get the crowbar, I walked over to the beginning of the path, of the bunkhead, I climbed up [illegible] 23 feet to start -- to make my way up to where the crowbar was and I bent down and got the crowbar and everything went out from underneath me, just went down, the floor went.

Q When you say everything went down, you are referring to what?

A My footage, my feet.

Q What was under your feet, if you know?

A If I recall, there were cartons, cases, everything. It was all general cargo.

Q The cartons and the cases move?

A Yes.

Q Was there separation paper there too?

A Yes.

Q What is separation paper?

A It's a regular paper and I'd say it's about maybe 36 or 40 inches in width and it's a reel of paper and we use it like -- in other words, if we have say cargo that's coming out say in a port like Bonaventura and say that's the last port, right, then we have another port coming in which would be Baranquila, so we put the separation paper in so that when the ship gets to Equador or wherever it's going they know that wherever the paper is that's a different port.

In other words, Bonaventura port doesn't come out in Baraquila and --

Q So the separation paper is used to separate the cargo for the different ports?

A That's correct.

Q Now, the separation paper and the cases and the cartons gave way underneath your feet. What happened to you?

A I fell forward.

Q You are indicating a motion with your hands?

A Right. I fell forward and I put my hand out to, you know, get my balance.

Q You are indicating your hand. You put your hand where?

A I put it out to catch my balance.

Q And what happened to you?

A I fell on top of my hand, I banged it.

Q Your hand came in contact with what?

A Fell on top of it.

Q On top of cargo?

A Yes, on the cargo.

Q What happened at that point, Mr. Munoz?

A At that point, I probably called, I think one of the fellows helped me up.

Q Do you know which one it was?

A I think it was Mario. I think it was Mario.

Q His name was Mario?

A Yes. I don't know the last name.

Q Did the other two men who were down there working with you see what happened?

A I believe so.

Q Were you within their sight as you were going for the crowbar?

A Yes.

Q How far away from the crowbar were you when this occurred?

A When I fell?

Q Yes.

A I'd say I was within reach of it.

Q Were you reaching out for the crowbar when you fell?

A Yes.

Q Did you hurt yourself when you fell?

A Yes, sir.

Q What did you hurt?

A I fractured my pinkey and I sprained my left wrist.

Q Did you feel any pain in your left hand as you were there right after the fall?

A Yes.

Q Did you fall flat or did you catch yourself with your hand?

A I fell flat but I landed on top of my hand.

Q Did you fall in a prone position?

A I fell forward.

Q And you were flat out?

A Yes.

Q But you had come down on your hand. What happened at that point? What happened then? Did you stay? Did you leave the ship or what did you do?

A Oh, then I sat down. I remember it was a very cold day that day. Took off my glove, you know, I ran around, a little bit around the square of the hatch, walked around and I saw down and the fellow said, you know, said you feel all right.

So about 10:30 like that I went to the -- I told him I am going to the timekeeper's office to see if I can get an aspirin or something, you know.

Q Did you do any work --

A No.

Q -- after this occurred? About what time did this happen?

A This happened about 10:00 in the morning.

Q And you waited around there until around 10:30?

A About 20 minutes, half hour.

Q What was the purpose of that, to see how you would feel?

A See how I would feel. I thought maybe it was a sprain, you know.

Q So at 10:30 or so, what did you do then?

A I went up and mentioned to the timekeeper and he says to me if I wanted to -- if I would want to go to the doctor's. I said no, I am going to go back to work, see how it is, you know. I said maybe I just twisted it

or something. So I went back down the hold.

Q And what time was that, going on 11?

A About a quarter to.

Q So what did you do then?

A I went back down the hold and I worked best I could.

Q For how long?

A Till about around 4:00 that afternoon.

Q Was that your regular quitting time on that day?

A No, I think it was 5:00. We got orders for five or six, I forget offhand what it was.

Q Did you work the full day?

A Till 4:00.

Q What happened at 4:00?

A I went back up to the -- well, my hand blew up.

Q You say it blew up. You mean it became swollen?

A Not very swollen and then I couldn't take it because it was too cold out.

Q What did you do then?

A So I went to the timekeeper's office and I explained to him what happened and I explained that it was bothering me. And he says fine, he says, and he gave me a, what do you call it, a letter to go to the Long Island College Hospital emergency.

Q Did you do that?

A Yes, I did.

Q Were you treated at the hospital?

A Yes.

Q Were you there overnight or just for that one visit?

A Well, that particular day so happens they were on strike so I was there till about 1:00 in the morning.

Q And did they do anything for you there?

A Yes, they applied -- they took X-rays, applied a cast, gave me some medication, told me to go home.

Q Did they take X-rays?

A Yes.

Q What sort of a cast did they apply?

A A regular cast, you know. Hand cast.

Q Was it on your finger, the small finger of the left hand?

A Yes, it was like in a straight position, up to here.

Q Was there anything on the wrist?

A Yes, the cast.

Q The cast was on the wrist and went down over the finger?

A Right.

Q Did you go home when you left the hospital?

A Yes.

Q Did you return to work then right away?

A No.

Q Did you get further medical treatment?

A Yes.

Q What doctor did you see?

A I went to a Dr. Golodner.

Q And did you explain to Dr. Golodner that you had an accident?

A Yes.

Q Did he give you treatment?

A Yes.

Q Did he take X-rays?

A Yes.

Q For how long a period of time did he treat you?

A I don't know, about 30 weeks, something like that.

Q Did there come a time when you were being treated by Dr. Golodner that you left New York?

A Yes.

Q Where did you go?

A To Hialeah, Florida.

Q Do you remember when that was?

A I remember because I had to go to Florida because

I had a previous wedding arrangement.

THE COURT: Where in Florida?

THE WITNESS: Hialeah.

THE COURT: Hialeah?

THE WITNESS: Yes.

Q And when was that that you went to Florida?

A I went down around May, I'd say -- I don't remember, around May 20th, 22nd, around there.

Q You say the purpose of your going to Florida was that you had already had an arrangement to be married there?

A That's right.

Q And were you married in Florida?

A That's correct.

Q Now, at this time was your treatment finished with Dr. Golodner?

A No.

Q Did you get any treatment while you were down in Florida?

A Yes.

Q Do you remember the name of the doctor that treated you?

A I believe it was a Dr. Porro, Perril.

Q Is that P-o-r-r-o?

A That's correct.

Q Now, I show you this note from Dr. Porro and ask you if you recognize that.

A Yes.

MR. DOYLE: I would like to have this marked, your Honor.

(Plaintiff's Exhibit 1 marked for identification.)

Q Now, this note, Mr. Munoz, indicates that the doctor gave you treatment for a certain period of time.

A That's correct.

Q And is that the period that you were down in Florida when you were getting married?

A That's right.

MR. DOYLE: I would like to offer this in evidence, your Honor.

MR. STILES: Your Honor, I object to it. I don't think it adds anything to what Mr. Munoz is saying, and it's not an authenticated document or anything like that.

THE COURT: Objection sustained.

Q Did you come back to New York thereafter?

A Yes, I did.

Q Did you receive further treatment from Dr. Golodner?

A Yes, I did.

Q Do you remember approximately when you came back?

A It was June sometime, I don't remember. Towards the end of June.

Q And at that point you say you went back to Dr. Golodner?

A That's correct.

Q Do you remember how much further treatment you got from the doctor?

A I believe maybe another one or two visits then around July the 3rd or 4th he sent me back to work.

Q July 3rd or 4th?

A July the 3rd he sent me back to work but the following day was a holiday so I went back on the 5th.

Q That would be in 1974, is that right?

A That's correct.

Q Di you go back to work as a longshoreman?

A Yes.

Q In New York?

A Brooklyn, yes.

Q And did you work at that job for a period of time?

A Yes.

Q Did you loose any time?

A Yes.

Q Thereafter when you were working as a longshoreman?

A Yes.

Q Can you tell us approximately how much time you lost after you returned to work on July 3rd?

A About 15 per cent of the time.

Q I beg pardon?

A About 15 per cent of the time.

Q About 15 per cent?

A Of the time.

Q For how long a period of time?

A Well, I am still losing time.

Q Is that right up to the present 15 per cent?

A Yes.

Q When you say 15 per cent, do you mean that your income is 15 per cent, approximately 15 per cent less than it had been?

A Yes, in the sense that, well, I don't know if -- you know, down the waterfront they got a new thing. They get you in through a machine and they give you categories. Now, my category is deck, driver and hold. And when you have enough deck, enough drivers, they validate people for holds. When I get validated for the hold I don't go down there for the simple reason I cannot do the work I am supposed to.

On numerous occasions, I went down there and I

told the guy, you know, you got a driver's job this and that, he said, if you cannot do the work stay home.

Q When you returned to work on July 3rd, have you been working as a longshoreman right up until the present time?

A Excuse me?

Q Have you been working as a longshoreman right up until the present time after you returned on July 3rd?

A Have I been working as a longshoreman?

Q Yes.

A When is the time?

Q Or have you had some other type of employment?

A Yes, I did have other employment.

Q You had other type of employment?

A Yes, in July of '75, I took a leave of absence and I tried -- I tried a job in Florida as a manager of a condominium and I worked at that about, a period of about five, six months and it got slow and they laid me off.

Q What were your duties in that job?

A It was just supervising, managing -- rental agent.

Q Any manual work of any kind?

A No, I was just supervising and rental agent.

Q For whom did you work?

A Palmetal Springs Condominiums.

Q Sort of a superintendent?

A I was the manager.

Q You say you took a leave of absence. What was the reason for that?

A Well, I was having trouble working, my hand was bothering me, it was cold down the piers and I went to Florida.

Q And you were working as the manager in Florida for this condominium. Was your salary less than what you were making as a longshoreman?

A Yes.

Q Will you tell us how much less?

A I was getting $700 a month.

Q How much?

A $700 a month and I had to pay my own taxes.

THE COURT: You had to pay your own what?

THE WITNESS: My own taxes. They didn't take any income tax out.

THE COURT: Doesn't everybody pay his own taxes?

THE WITNESS: I mean they didn't take it off my salary like they do.

Q Did you come back to New York and resume work as a longshoreman?

A Yes.

Q When did you do that?

A April the -- about April 15th, 16th.

Q What year was that, '75?

A I left in -- came back in '76.

Q '76?

A Yes.

Q Have you been working as a longshoreman since then?

A Yes.

Q Are you still suffering about 15 per cent reduction in your working capacity?

A Yes.

Q Does your hand, your left hand, bother you at the present time?

A Well, it's not a continuous pain or nothing like that.

Q What pain are you referring to?

A Well, I get like a pinching nerve here.

Q Referring to your left small finger?

A Small finger. And my wrist has a tendency to swell up. My hand swells up.

Q Is there any particular time it has such a tendency?

A If I do continuous lifting like coffee bags and so forth.

Q Referring back to the scene of your accident this cargo that you were walking on along this pathway, did you have anything to do with setting that there?

A No.

Q Do you know by whom that had been placed there?

A No.

Q And this was you say your first day on that vessel?

A That's correct.

Q Can you tell us what your average weekly wage was for approximately a year before your accident of November 6th?

A Approximately about 215 a week.

Q About 215?

A 215, 216, I don't know.

Q That's per week?

A Per week.

MR. DOYLE: I have nothing further, your Honor.

X CROSS EXAMINATION

BY MR. STILES:

Q Mr. Munoz, do you remember what day of the week November 6, 1973 was?

A What day of the week?

Q Right.

A I'd say Monday or Tuesday.

THE COURT: We will take our adjournment just about 12:10 or 12:15. Proceed.

Q Mr. Munoz, you gave a deposition in this case in about December of 1975, is that correct?

A Excuse me?

Q Did you come to our offices and have a reporter there and you were asked questions and gave answers concerning this case in December?

A I believe so, yes.

THE COURT: Let me explain for a moment to the jurors what that is. Under federal procedure parties to a litigation in advance of the trial proper, such as we are conducting now, have a right to examine one another, that is,the litigants have a right to examine themselves and also to examine witnesses. These are called depositions. They are attended by the lawyers and the persons who are examined, whether they are litigants or witnesses, are sworn the same way they are sworn here. And whatever is taken at that time may be used upon the trial depending upon the circumstances of counsel he is referring to these depositions, apparently this witness was questioned by the

lawyers for the defendant.

Go ahead.

Q I would like to show you a sketch and ask you if you made this sketch during the deposition that was taken.

A Yes, it looks like it.

Q And this sketch, was it made to show a description of the layout of where you were working on the day your accident occurred?

A Yes.

MR. STILES: I would like to offer this in evidence.

THE COURT: Any objection? If not, it may be received.

(Defendant's Exhibit A received in evidence.)

Q And the broad outline is the vessel, is it not, that you were working on,in the sketch?

A Yes.

Q And is the large square the No. 3 hatch that's depicted on this sketch?

A Yes.

Q Now, in the front of the vessel is where I am pointing, is that correct, up by the nose?

A Forward.

Q And in the No. 3 hatch you have a line drawn

fore and aft in the middle. What does that depict?

A Well, that was like I was trying to describe before, that's like the steel barrier that's -- that separates the two hatches or tank or whatever you call it, I don't know.

Q So this No. 3 hatch lower hold was separated in the middle by metal, some metal barrier of some sort?

A Yes.

Q And you have round circles on the left hand, or port side. Is that the cargo that you were loading right before the accident occurred?

A That's right.

Q Do you recall how many ladders there were in the lower hold on the port side that you were working? Let's call it the left hand side.

A How many ladders?

Q Correct.

A Down the lower hold?

Q Yes, sir.

A Well, the one on the escape hatch on the forward end and then the wooden ladder that they had there from the lower tween to the lower hold.

Q And was there not another escape ladder in the aft or the back part of the No. 3 hatch?

A I imagine there must be but I didn't go back there to see. There was cargo there.

Q Just to give us some sense, how big is this No. 3 hatch lower hold, the half that you were working in? Is it as large as this room?

A The section I was working in?

Q Yes, the half that you were working in.

A I'd say a little bigger than this.

Q It's bigger than this?

A Yes.

Q Wider and longer or just -- or both?

A I wouldn't say wider because we had that partition there but longer itself.

Q And when you first came down they were working in the square or middle of the lower hold loading cargo, the other men that you were going to be working with?

A When I got down there?

Q Yes.

A Yes, they were in the square in the lower hold.

Q And was part of the square of the hatch empty when you first went down at 9:00?

A Yes, I would say so.

Q And it was in the empty part that you and your fellow workers were loading these reels?

A Yes, we were working on the floor, right.

Q Now, forward of the square where you were working was the cargo that had already been stowed when you first arrived?

A Would you explain that again?

Q When you first got down into the lower hold at 9:00, was the cargo already stowed in front of where you were working?

A In front of where I was working?

Q Right. In the forward end of the No. 3 hatch.

A That's correct, yes.

Q And there was cargo already stowed in the after part of the No. 3 hatch?

A That's correct.

Q And is this the normal procedure that cargo is loaded in the forward and the after parts of the hatches and then as you go you work towards the square of the hatch?

A Well, that's hard to say because sometimes you can come in already loaded.

Q Assuming that there is no cargo there.

A Well, it depends on the port they want to work the ship. In other words, assuming we just loaded the ship and they tell us put some cargo in the after end in the

midship, they may be saving the forward end, the ship may be going to Philadelphia, Baltimore or some other place to pick up some cargo. So we have to load it the way they tell us.

Q In any event, there was cargo in the forward and after end and you were filling it in the center, is that right?

A We were working between both cargoes right in the square.

Q Did you finish the first floor of the reels before you went to get the crowbar?

A Yes.

Q And then what did you do after you finished the first --

A The first tier?

Q The first tier.

A Well, someone asked for plywood to make a floor so we could walk on it. So the gangway man sent us down, I believe it was about 10, 12 sheets of plywood, we landed the plywood up against this partition like I was telling you, this steel barrier and we proceeded to walk the plywood to the offshore side onto two men to a plywood and we made a floor for ourselves then started to loading the reels again with the same kind of cargo.

Q So you completed filling one level of the floor then you took the plywood boards,made a flooring on top of that?

A That's correct.

Q Then you started loading the second tier of the cargo, is that correct?

A That's correct.

Q Is this normal procedure when you are building tiers like that?

A Yes.

Q And you had started on the second tier when one reel got caught on another reel and you went to get the crowbar?

A That's correct.

Q How far forward did you walk on the plywood before you got to the cargo that had already been stowed prior to your coming down into the hold?

A Say that again.

Q You were going to walk forward to get the crowbar, is that correct?

A Well, that depends because where I was working I was facing the partition. If I was to get the crowbar I would have to go to my left which would be the forward end of the ship.

Q So you could have walked towards the forward end of the ship?

A In other words, we weren't working fore and aft. We were working across.

Q But you were still going to walk toward the forward end of the vessel to get the crowbar?

A Right.

Q For part of this way did you walk on the plywood that you had laid down?

A That's correct.

Q And then you came to the cargo that had already been stowed. Now, could you describe how high was the hatch?

A How high is the hatch from the hold to the upper tween deck or what?

Q Yes, approximately.

A About 30 feet, approximately.

Q To the bottom of the lower tween deck?

A On this particular ship I couldn't tell you because I never, you know, I never seen this ship. I'd say about 30 feet.

Q And the cargo that was stowed forward you said had been stowed in tiers or steps?

A It was like slanting upwards.

Q Was it slanted or was it like a ladder?

A No, there was like little cartons sticking out like a sort of a step going up. It was inclining upward.

Q But in steps?

A If you want to call them steps.

Q Was the cargo stowed that was forward from the offshore side to this wall? Was it completely filled up with cargo?

A Yes.

Q In the forward end?

A Yes.

Q Was there a pathway anywhere along this?

A Going up to the escape hatch.

Q And was this a path that went right -- that you walked on the floor or was it a path --

A No, there was a path going up cartons.

Q How could you distinguish the path from the other cargo?

A Because there was cargo standing all over it and you just could look up and see like it's leading right up to the escape hatch.

Q And how wide was it?

A Not very wide.

Q How wide?

A Two feet.

Q And it was all the way to the escape hatch ladder, it was two feet wide?

A It was supposed to be leading up to there but wasn't up there. It was leading up to the escape hatch. Then when it got to the top there was no path. It was just packed right up to the ceiling.

Q Could you see the ladder from the square of the hatch?

A The escape hatch?

Q Yes.

A Yes, you could see it.

Q So there wasn't any cargo stowed in front of it?

A It was stored all the way up to it but you could see the escape hatch, about two feet of it; in other words, you could see the light coming through the escape hatch. You knew the escape hatch was there.

Q The ladder is a free-standing metal ladder, is that right?

A I imagine on this one it was, yes.

Q So you went off the plywood onto this path? Is this what you were going to walk on first, this path?

A I was going to use that to go get the crowbar.

Q Was this path right against the steelpartition

on your right?

A No, it was right in the middle.

Q Right in the middle. Half-way between the steel partition and the other side of the ship. Where was the crowbar? Was that right in the pathway?

A No, it was right up there, about two feet in.

Q To the left or to the right as you are walking forward?

THE COURT: About two feet in from where?

A In other words, after I climbed up, from the plywood, I climbed up to the path --

THE COURT: You are to talk up.

A From the plywood I come to this path, figure about two, three feet in. It was just laying there.

Q And could you reach the crowbar from the path or would you have had to climb on the other part of it?

A No, I could reach it from the path.

Q So you didn't have to leave the path?

A No.

Q Did you get to where the crowbar was before you fell?

A Just about. I was just in the motions of picking it up.

Q In that path, you are watching as you are walking

on the path, were you?

A Yes.

Q What were you walking on? Were you walking on cases or cargo that you could see or were you walking on something else?

A Well, there was separation paper down. It was all kinds of cargo, bags, cartons, crates. Everything. It was all general cargo. There was no special cargo or no heavy lifts or nothing like that. It was just general cargo all mixed in there.

Q But you say the separation paper was right down the path?

A No. Laid across.

Q Crossways?

A Yes.

THE COURT: Had this cargo on which you were walking,which you say was a path already, placed in position?

THE WITNESS: Yes.

THE COURT: It was in its regular position?

THE WITNESS: Yes, it was stowed. Completely stowed.

THE COURT: And you say there were bags, cartons, whatever it was?

THE WITNESS: Yes, whatever it was.

THE COURT: There was separation paper over it?

THE WITNESS: Right.

Q And this had been cargo that had been brought into the ship and stowed, is that right? Just like you were stowing the reels this other cargo had been brought into the ship and it was stowed in its place?

A I don't know how put it there, I didn't stow it.

Q You don't know who put it there, is that correct?

A No.

Q But you were going to discharge it? This cargo was all stowed and you were loading cargo behind it?

A I don't even know if it was going to be discharged.

Q Do you normally load cargo that's going to be in front of cargo to be discharged?

A Not normally.

Q So you say the separation paper was going not in the direction front and back of the ship but it was across from one side of the ship to the other side of the ship?

A That's right.

Q And was it continuous along this path? Were there gaps or was there just one piece of paper and another piece of paper next to it?

A No, four or five strips across separating these reels from these cartons of general cargo. Unless there is another port underneath that, I don't know. There could have been two ports, one on top of another.

Q Now you are leaving the plywood that you placed down there and you are going to step onto the path. What did you first step onto? Paper or cargo?

A Over the paper onto the cargo. The paper is right on top of the cargo.

Q So you stepped on the paper?

A Yes.

Q Then you continued walking on the paper until you reached the point where the crowbar was?

A Continually walking. I had to crouch because like I sees the thing was inclining up.

Q What did you have to crouch from?

A Well, from the plywood I had to climb up to where the path started. About two feet I had to --

Q You were in a path that was two foot wide?

A I don't follow you.

Q You said you were going onto this path and it was about two foot wide?

A I was standing up on the plywood. In order for me to get this bar I had to climb up about two feet to get

up on top of this cargo, cartons, whatever, to walk up and get the crowbar and when I climbed up there and walked over to get the bar that's when I put all my weight and everything went down underneath me.

Q Were you on the path at that time or the cargo outside the par

A No, the path.

Q And what were you standing on, separation paper?

A What do you mean, when I got up on the cartons?

A Right.

A The paper and then the cargo. The paper is laying on top of the cargo.

Q So your foot was on top of the separation paper under which there was cargo?

A Yes.

Q And you kept walking on the separation paper until you slipped?

A I didn't slip, I just went through.

Q Did you go through the paper or did the cargo --

A Everything moved under my feet.

Q So you took a step and something under your feet shifted?

A Right.

Q And then you fell forward you didn't go through

a hole in the --

A Oh, yes, I went down up to my knees.

Q After the cargo shifted?

A Then when I went I went forward, I fell forward.

Q What I am trying to find out is did you go through a hole first and then the cargo shifted or did the cargo shift then you went into a hole?

A I went right through the cargo.

Q So you went right through a box?

A I don't know, whatever. I don't know what it was.

Q All I am trying to find out is whether you were walking along and your foot went through something because something gave under your foot or whether the cargo shifted down.

A Well, I have no way of knowing that.

THE COURT: Let me see if I understand. Do you know if your foot went through an opening between cargo pieces or if your foot slipped on separation paper or what? Do you know just --

THE WITNESS: Yes, I know he --

THE COURT: Is that your question?

MR. STILES: Yes, sir.

A What I am trying to explain to him is that I don't remember. In other words, I didn't see whether

there was a space between the carton or if everything was shifted because there was paper down. I walked on this paper. I remember this -- I have no way of knowing if like I says, I didn't see if there was a hole there. If I would have seen a hole there I wouldn't have walked over there. I was under the assumption that it was a path and the paper was there and I went up the escape hatch. I know if I am down the holw and I make a path to the escape hatch I am going to rest assured that it's the right kind of path.

Q And when you were walking from the plywood towards the crowbar and as you were looking where you were walking it appeared as if you -- you didn't see any holes, is that correct?

A No.

Q It looked as if it was level?

A It wasn't the best tiering job I ever saw. It wasn't the safest either but I had no choice. There was no other way to get the bar. And you had to go up there. There was no choide.

Q Do you know who left the bar there?

A No, I don't know.

Q And you don't know who loaded this cargo as you sit here today, do you?

A No.

Q Was there ahy -- was this paper on top of all the cargo that was loaded in the forward section?

A No, just strips. Like I said four, five strips separating one cargo from the other, one port from the other. In other words, if it was Bonaventura we separate it from Baraquila. Like I says if there was separation paper underfoot the cargo there could have been going to two ports.

Q You said the separation papers between --

A I am just guessing. I never really took time out to measure it.

Q So there was about 10 feet wide of separation paper?

A Say this is the width of it, the length from here to here, that's the length of it. Then I don't know how long it is because it's a reel you know and you just roll it out. You just roll it -- make like three or four tiers of it and like I said there is cargo going on top of that then we put cargo. When we reach the other port -- sometimes they use plywood. In this case they were using paper.

Q On occasions did you lay plywood floors and then put --

A Oh, yes, on heavy cargo; sure.

Q You said there were three other men working with you that were part of your gang?

A That's correct. Well, there was actually say seven and myself is eight but in my particular spot there was only four of us because of that partition. The other four were on the other side.

THE COURT: The other four couldn't see what was going on?

THE WITNESS: No, no.

THE COURT: The four of you were working this particular area?

THE WITNESS: That's right.

THE COURT: You left the other three to go get the crowbar, is that correct?

THE WITNESS: That's correct.

THE COURT: Where were they when the accident occurred?

THE WITNESS: They were right in the square of the hatch underneath the --

THE COURT: I know the square of the hatch but they were working in a given area just as you had been until the point that you walked over to get the crowbar?

THE WITNESS: Right.

THE COURT: Where were they?

A Well, it was the second tier we had just started so I would say we were almost like, you know, against the partition. So we landed it and we were holding it then that's when I went to get the bar.

THE COURT: Were they against the partition or the skin of the ship? Is that --

THE WITNESS: No, they were right in the square. We were touching the reel, you know, flipping the reels towards the partition.

THE COURT: How long had you been working there before the accident occurred?

THE WITNESS: About an hour.

THE COURT: And who put the separation paper on the first tier of cargo that was laid?

THE WITNESS: I don't know.

THE COURT: Was it already laid when you --

THE WITNESS: I imagine so.

THE COURT: Well, what work were you doing during the period of time that you were working?

THE WITNESS: Just handing in these reels.

THE COURT: As they were lowered?

THE WITNESS: As they were coming in.

THE COURT: You were pushing them into place?

THE WITNESS: That's right.

THE COURT: What tier was this, the first tier or the second tier?

THE WITNESS: We just finished the floor, we laid the plywood down. I would say it was about the third or fourth, going on the top tier, on the second tier.

THE COURT: When you laid the plywood down does that mean that you had laid the first tier of cargo?

THE WITNESS: Yes. That means we were not working on the floor any more, we were working on top of the cargo.

THE COURT: Now, members of the jury, please don't draw any inference in the fact that I am asking questions. This is simply for the purpose of clarifying what the issues in the case may be.

BY MR. STILES:

Q For the hour thatyou were working down in the lower hold did you have occasion to look at the cargo that was in front of you before you had walked over there?

A Yes, I seen it.

Q And did you see anything that was wring with it or -- as this cargo was stowed?

A There was plenty wrong with it. There was plenty wrong with it.

Q Do you know who loaded that?

A No.

Q Did you make any complaints to anyone?

A Who am I going to complain to?

Q How many men -- you work in gang units, is that correct? You work in groups of men that are called gangs?

A Yes, that's right.

Q How many men are in a gang?

A Well, in this particular day I'd say maybe there would be 18 and this particular day -- see, sometimes if they work coffee they add two or three men on. In this particular case it was a loading ship so they wouldn't add four extra men to the gang. When we are loading we are not handling the coffee. Only that this particular ship called for an extra deck man because you couldn't see from the -- the gangway man couldn't see down to the lower hold. That's the only thing they only added one man, except if you were working heavy cargo where they need a high-lo machine then they would put a machine driver down there. That would be the extra men in the gang but other than that it's just a regular man gang.

Q So every gang you had, eight of you would be working in the ship itself stowing the cargo, is that correct?

A Right.

Q And on this day you say you had four men on deck that were part of the gang?

A We had eight men down the hold from what I could see. There was four men up on deck.

Q Two of them operate the winches bringing the cargo into the --

A One operating the winch and two giving signals.

Q The two that are giving the signals are watching what's going on down where you are working, is that correct?

A No, one would watch the dock and the other one would watchthe hold and the winch man would take the signals from the guy down the hold. Then he would take the signals from the guy on the deck.

In other words, one gives signals for the dock, one gives signals for the hold. The reason for this was that this particular ship you had to keep climbing up and down, up and down. You couldn't do that.

Q And then you had more men of your gang that were on the dock that would hook the cargo up to the winches that would bring it down to you?

A That's correct.

Q And how many is that, four?

A They had four. I mean I believe so, I didn't

see them. I was down the hold.

Q And other members would drive hi-lo's that would bring the cargo from the pier --

A That's the usual procedure, yes.

Q Who is the hatch boss?

A Nick Simeone.

Q What is his job?

A He is in charge of the gang, you know.

Q Who do you take your orders from as you are working during the day?

A The hatch boss.

THE COURT: Mr. Stiles, I think we will take our adjournment now. We will take our adjournment as I explained to you much earlier today.

(An adjournment was taken at 12:15 p.m.)

* * *

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Q And in the last quarter shown on here, $2800. And your recollection is the money that you earned as a longshoreman during those periods of time?

A That's probably right.

THE COURT: Now, what were you reading from?

MR. STILES: The Exhibit, your Honor.

THE COURT: Let me see that.

MR. STILES: Yes, sir.

(Handing)

THE COURT: Proceed.

Q I want to go back to -- back into the lower hold where you were loading on November 6th.

Were you and your fellow workers stowing the rolls you told us about completely from the left-hand side of the lower hold to the partition that you told us was in the middle of the hatch?

In other words, completely across that portion of the hatch you were working?

A Well, we were working in the square like I said, and the -- actually the bow, the forward end of the ship. If I was to face it it would be to my left and the after end would be to the right. And then we were in the middle. So we were loading from the partition going towards the offshore, you know, to the water side.

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Q So if you were standing in the lower hold where you were working facing the front of the vessel, the partition side of the vessel was the one that was tied up tothe dock and to your left would be where the water was on the other side of the vessel?

A Well, let me try it this way. Exactly where you are standing, for instance assuming I am standing there, now to your left, that piece there would be the partition I told you about.

Where the jury is sitting would be the forward end of the ship. Where the blackboard is would be the after end of the ship. In other words, we were loading from--against the partition going up against the offshore side.

Q All right.

So you were loading across the vessel sideways, the rolls?

A In other words, all this section here was full--was fulled up, right? Then that section there was full. So then we -- I did it wrong, the partition would be here, we were loading back that way.

Q All right.

MR. STILES: If I may, your Honor, and Mr. Doyle, may I sketch on the blackboard and maybe we can all see it.

Can you see the blackboard from where you are?

THE WITNESS: Yes.

Q My drawing is terrible, but I will do the best I can.

We will make this the No. 3 hatch, all right? This will be the front of the vessel, this way, and this will be the rear, or the aft of the vessel.

Now, I believe you testified that down the middle of the hatch was a steel partition. Yes?

A Correct.

Q And this is where the seaside, or the offshore side of the vessel was?

A Correct.

Q Now, you were working in the middle of the side of the lower hold; is that correct? On the offshore side.

Now, would the rolls you wer stowing be approximately in this location?

A Right.

Q And did they go from the offshore side of the vessel over to the partition one row before your accident occurred?

A Up and down, from the partition going back.

Q Partition going back this way?

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A Can I show you? I am not much of a drawer either.

Q Yes, please do.

There is cargo in front of that line which you drew?

A This would be the forward end of the ship. And this is the after end --

THE COURT: Please talk up so we can all hear you.

THE WITNESS: I am sorry.

A This is the forward end of the ship. This is the after end of the ship. This is not cargo here and there is cargo here.

So, in other words, this is the partition, right? This would be the dock over here, the dock side. And this is -- we were working in the partition right here. Married fashion. Then we would work our way down this way, then we completed this here, then we filled up the square, then we laid the plywood down, then we started the work on top.

We were working off, you know, from the --

THE COURT: Are you all able to hear him? The jurors can't hear you. You are just talking to the lawyer. We all want to hear what you are saying.

A In other words, there was cargo here in the

forward end, cargo in the after end and this was where we were working in the square of the hatch. Then we were laying these reels, these rolls from the partition from against the partition we started the first tier. That's the way actually when I got down it looks like that.

Then I started joining in joining in with the fellows. Then we filled this up from here to here, then we went back on top again.

Q And then after laying the plywood flooring you started to load the second layer of rolls, is that correct?

A That's correct.

Q All right.

Was the forwardmost row of rolls that you had stowed --

A Excuse me?

Q Was the forwardmost row of rolls that you stowed, this row across here, was that row flush against the cargo that had already been stowed or was there space in between?

A We were loading them fore and after.

Q But you completed the whole floor before your accident occurred; is that correct?

A That's correct.

Q So before your accident occurred, all of this was filled in with one layer of rolls?

A Correct.

Q The forwardmost row,was that flush against the cargo that had previously been stowed in here or was there space in between?

A Well, no, due to the fact that when it is cartons like that what they do is like lay plywood against there you know, stick it down in the hold like plywood so that when we do chock the cargo you know, you are not damaging any cartons if there should be glass in there or if the ship should go out to sea and the cargo should shift because it is heavier cargo and it is only cartons. So we just put the cargo in there -- plywood in there and chock it against the cargo.

Q So you have pieces of plywood on end in between the rolls and the cargo that had previously been stowed in the front?

A Right.

Q Then you pushed -- the rolls were directly up against that cargo that had been loaded before?

A Right.

Q The cargo that was in front of the rolls was that loaded in layers or tiers?

A You mean the forward end?

Q Yes.

A From what I can see it was piled up, you know, it was -- when you load yougot to go tier for tier all the way up, tier for tier all the way up.

Q Just like you were doing on the rolls --

A I mean that's the way I would do it.

Q And that's the way that it has always been done when you have been down there working; is that correct?

A Everybody works different, you know, I can't say that.

Q Was the cargo that was in front of the rolls the same level as the rolls that you had completed before your accident or was it higher?

A It was higher.

Q How much higher was the first row of cargo next to the rolls that you had stowed?

A Would you explain that again, please?

Q Was the cargo that was loaded in this space also loaded in rows as you were loading the rolls in rows? Did you have one row of cartons then another row of cartons behind that?

A It's hard to say because I don't know what was there. I don't know if they laid skids under there then they threw cartons on top of it or if they had drums underneath and put light cartons on top. I have no idea of

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knowing how they stored it if it was across or it went straight up or they blew themselves out of the wing.

Q Well, tell us, after you put the plywood down on the first layer of rolls, you were standing on that plywood, is that correct?

A That's correct.

Q What did you see or what could you see as you were facing forward, the cargo that had previously been loaded?

A I'd say from after we were standing on the rolls I'd say the cargo was maybe about, you get up there you had to go up about two feet from the plywood you would have to step up two feet.

Q You would have to step up about two feet?

A Yes, you would have to more or less climb up two feet.

Q And did you testify yesterday that --

MR. STILES: Let me withdraw that.

Q Was that cargo that was forward of the rolls, did that go from the offshore side of the vessel over to the partition? Was the cargo that was loaded in this area loaded from the offshore side of the vessel over to the partition? Was it all filled up in here?

A It wasn't exactly even because they got the

piece through,you know. In other words, the coaming comes straight down, you know, that's where the opening of the hatch starts. So then to go into the forward end you have to go around that new arch there, then that's where the partition starts from the tank. In other words, it comes straight down then there is the tank, the partition. Then you have to step inside to start working in the forward end.

So, in other words, if you want to know if it was flush across --

Q If it was filled up in here with cargo?

A Yes, it was filled up with cargo, but it wasn't straight across.

Q As you were going to go get the crowbar, did you step up the two feet on to the cargo that was loaded in that forward portion of the hatch?

A That's correct.

Q And was there special paper covering the row of cargo that you first stepped on?

A Yes.

Q Approximately what was the distance between the end of the rolls, the row of rolls to where the crowbar was?

A I'd say about six or seven feet.

Q And how far from this six or seven feet did you

go before you fell?

A I had to climb up.

Q Right. You stepped up on the two -- you took the two foot step up?

A In other words, from where the rolls were, say where I was standing, I walked over, climbed up, say from there, from the area where I was + where I had to climp up say it was about six or seven feet.

Then I climbed up, I'd say maybe about two feet, three feet in was the crowbar but you couldn't reach from where I was.

Q So you had to step up on the cargo and walk on the cargo to get the crowbar?

A Right.

Q How many steps approximately had you taken towards the crowbar while walking on this cargo before you fell?

A Two, three feet.

Q Were you walking on separation paper the entire time?

A Yes. Like I said it was laying across.

Q Did you say it was six feet that you would have had to walk to get to the crowbar?

A No, like, in other words, we were standing

where the rolls are, right in between I walked over, see from the partition over to the left, that line that's on the left-hand side.

Q Can you tell me when I get to the spot?

A About there, yes. Then inward.

Q And was the crowbar directly in here?

A It was on top.

Q Okay. But you were going to walk straight forward to get to the crowbar?

A No, I walked back then I cut to the left and I had to climb up.

Q But was the crowbar somewhere in here?

A Yes, right, it was resting up there near the pat.

Q So you walked over to here, stepped up on the cargo and then started walking across the cargo covered with separate paper towards the crowbar. And you took how many steps before you fell, approximately?

A Two or three.

Q And you were watching as you were walking towards the cargo which you were walking on; is that correct?

A Yes. I was looking to, you know, to get the bar.

Q And the area that you walked for that two or

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three steps, was that level as far as you could see?

A Well, it --

Q From what you could see.

A From what I could see, you know, it wasn't the most levelest floor I ever saw. Or the cargo that was stored.

Q The cargo that was what?

A The cargo that was there, the cargo that I was walking on, you know, it wasn't that -- I mean it wasn't shall we say like this table here, flat or nothing like that.

Q Well, how was it? Was it all turned around or was it a fairly level area that you were walking on?

A It was going upwards. An incline.

Q An incline or in steps?

A Well, like an incline going upwards, you know. If one case is big you put the case down, then you try and match the other one in there. You know. That's the way it should look.

Q Did you see any holes in front of you as you were walking?

A No, there was paper on there. I couldn't.

Q I asked you this yesterday but I am going to --

When you felt yourself falling, did your foot go down through the separate paper or did cargo skid out from

underneath your foot, if you know?

A That I recall I felt everything, you know, just the floor move from underneath me.

Q Did your foot go through the separation paper at all?

A Yes, I went right through whatever it was, cartons, paper. I went up to about my knee.

Q Do you know if you went through a carton or if you stepped through a hole that was underneath the separation paper?

A No.

THE COURT: Pardon me. What was the last question?

(Record read)

Q Do you know who loaded that cargo which you were walking on when you fell?

A No.

Q Did you ever injure your left arm or your left-hand side of your body before?

A My left shoulder.

Q When was that?

A About 1970, '71, I don't recall.

Q Did you lose time from work?

A Yes, I did.

* * *

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witness?

MR. DOYLE: Yes, your Honor.

THE COURT: All right. This witness is excused.

(Witness excused)

THE COURT: Proceed, please.

MR. STILES: At this time, your Honor, both counsel are stipulating to the cargo -- the final cargo stowing plan and the stevedore activities sheet being entered into evidence.

THE COURT: What exhibits will they be?

(Defendant's Exhibit K and I received in evidence)

MR. STILES: Both parties have also stipulated that the cargo that was loaded forward of the rolls and on which Mr. Munoz was walking when he fell was loaded the day before his accident by Universal Stevedores.

MR. DOYLE: That is correct.

THE COURT: Except for the doctor, is that correct, the plaintiff rests?

MR. DOYLE: Yes, your Honor.

THE COURT: Now, the case is being tried a little irregularly. The doctor should have been here now, so you would hear his testimony, but for some reason he is not and

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we will hear him later in the day.

In the meantime, the defendant will go forward with his case and I will hear certain matters out of the hearing of the jury.

(At the side bar)

THE COURT: I think we will be more comfortable inside.

(In the robing room)

THE COURT: All right.

MR. STILES: Your Honor, at this time, the defendant moves for a directed verdict since the plaintiff's actual case is finished.

I think the uncontroverted evidence shows that the plaintiff was injured when he was walking on top of cargo that had been stowed by the company that he was employed -- we stipulated that this cargo on which he was walking was stowed the day prior to his accident, November 5, 1973, that he came down to the hatch on November 6th and he went to walk upon that cargo, upon which separation paper had been placed, to get a crowbar when he fell.

There is no testimony as to what, if any, defect there was. He doesn't know if there was a hole in the stow, if one of the cartons caved in under his foot or anything of that nature. There is no evidence whatsoever

of any open and obvious danger. This was a latent defect.

There is no proof whatsoever that the shipowner had any knowledge of any defect if in fact the evidence shows that there was a defect.

Now, as to your questions on Napoli is a very different case. That involved an open area on top of the deck where the stevedore was injured when there was snow on the deck and on board that he said that he placed on the deck to stand on -- or take that -- he didn't say whether he had placed it or not.

The Court of Appeals said that a shipowner is not absolved of negligence merely because the condition is open and obvious. You have to go further than that.

It is my view that most open and obvious cases are still as a matter of law no negligence on the shipowner. However, there when you have snow all over the deck it is something that the stevedores may not be able to correct. But that's what that case is limited to.

Likewise, that case was limited to the issue that there was no testimony as to whether the shipowner or the stevedores placed the board on which the stevedore had slipped and fallen. That was an issue of fact for the jury to resolve.

I believe the amendments to the Act and the

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legislative history and several cases right on point all have made it clear that the shipowner is not negligent vicariously for negligent acts of the stevedore.

In fact, they never were negligent -- that wasn't negligence on the part of the shipowner even before the new act was amended.

Yes, the ship might become unseaworthy for stevedore's negligence, but there was never vicarious negligence of the shipowner.

Now, we have a case that is, I think, does not run afoul of Napoli whatsoever, that's even further from the case we have here.

There the ship was loaded in another port, came into the port where the plaintiff was injured and the plaintiff fell through a hole in the stow. And a directed verdict was given for the shipowner. They said this was a condition that the stevedores were in the best position to remedy and discover, that therewas not shown any knowledge on the shipowner.

And so that I don't go too long, I know what the plaintiff is going to say and I just want to give my view what that would result in. The plaintiff is saying that at some point on November 5th the stevedores finished loading the cargo in the forward offshore end of the lower

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hold of the No. 3 hatch. Therefore the control reverted back to the shipowner and the shipowner should have discovered the defects.

Well, to be frank, that has to be determined utter nonsense. Not in legal arguments at all, but in fact. That would mean that the ship and the crew who were not experts in stevedoring after the longshoremen had finished for the day would have to take the separation paper off, would have to take the cargo off to check whether it was properly stowed. Then what would they do? The stevedores would load it again and they would go through the same process or would the ship reload the stuff that they have checked?

MR. DOYLE: If your Honor please --

THE COURT: What is your theory of liability?

MR. DOYLE: Well, very briefly, with respect to the one point whether or not the condition was dangerous and so on, assuming that the ship had an obligation to do something about it, I think it certainly would go to the jury on whether that was a dangerous --

THE COURT: What was a dangerous condition?

MR. DOYLE: What was a dangerous condition?

THE COURT: You talk of a dangerous condition. What are you describing as a dangerous condition?

MR. DOYLE: The fact as he described this walkway involving the escape hatch, it was covered over with separation paper. It is the only way he could go. He is walking along the separation paper and the thing collapses underneath him in some form or other. He is not quite clear what happened except that he went down. It was the only way he could go. He had no other way to go.

And the Napoli case indicates when a man is doing a job like that you can't hold him to strict accountability. Not in that language, but that's what it meant. He is sort of running over there to get the crowbar so he can get back to work.

THE COURT: Are you claiming this is an open and obvious condition?

MR. DOYLE: Yes, it's an open and obvious condition, I would say. The way he described the area, it wasn't a proper walkway.

THE COURT: Well, this is something that he himself observed.

MR. DOYLE: He could see, yes.

THE COURT: You said it was an open and obvious condition.

MR. DOYLE: As far as the way the thing had been set up, your Honor, it was not open and obvious as to

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what was underneath the separation paper. He did indicate what was open and obvious was that it was not a proper pathway to get to the escape hatch because he said you had to climb up and make your way and crouch down and you were going on your belly when you finally got to the escape hatch.

I think the fact, as far as Napoli is concerned, I think that Napoli applies here for this reason primarily:

If this had been done right at the point when he had his accident, if they had just put down the paper, for example, if he had fallen on the boards that they had just put down, I don't think the ship would have had anything to do with that, the dunnage boards they put over the reels because this had just been done and it happened and the ship knew nothing about it.

THE COURT: What is your theory of holding the ship. Won't you please be precise so I know?

MR. DOYLE: Yes. The theory is this, that this had been done the day before, on November 5th, by the same employer.

The plaintiff was not involved in that operation at all. He knew nothing about it. He came on the ship one day later. The ship should have inspected this area, should have known about this area because it involved an

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escape hatch. And this escape hatch pertains not only to the safety of the longshoremen, it also pertains to the safety of the crew if they are involved in doing anything with the cargo.

If anything should have occurred, this escape hatch is such that it involves not only the crew but also the longshoremen. It involves both of them.

On that theory, the ship should have looked at their escape hatches periodically, it was there for twenty-four hours and I think they were derelict in their duty in not carrying out at least a search, or an inspection the following morning, let's say before work commenced.

To make sure that the escape hatch, which would have been used by everybody was in proper operating condition. According to his testimony it was not, it was not a good route to get to the escape hatch.

THE COURT: Are you saying that they should have discovered the condition of the separation paper over the cargo being an uneven footing when they made the inspection or should have made the inspection with respect to the escape hatch?

MR. DOYLE: Yes.

THE COURT: Is that the theory?

MR. DOYLE: Yes. Because putting paper over

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cargo in that area where you are walking along going towards an escape hatch where of course you would be in a hurry if you were going to use it quickly, you wouldn't be looking that closely and so there shouldn't have been separation paper there because it would lead to a trap.

THE COURT: All right. I will reserve decision.

(In open court)

THE COURT: All right. Defendant will go forward please.

MR. STILES: Your Honor, at this time I would like to call Mr. Edward McGann to the stand.

E D W A R D M C G A N N , called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STILES:

Q Mr. McGann, what is your present occupation?

A Director of Operations.

Q By whom are you employed?

A Grancolombiana New York, Inc.

Q How long have you been --

THE COURT: I cannot hear. Director of Operations

of whom?

THE WITNESS: Grancolombiana New York, Inc.

Q How long have you been employed in that position by Grancolombiana?

THE COURT: That is of the defendant.

A Two years.

Q Is Grancolombiana New York the general agent for New York of the defendant, Flota Mercante Grancolombiana?

A That's correct.

Q Prior to being director of operations, what was your position on November 6, 1973?

A Assistant terminal superintendent.

Q Can you speak up just a little bit.

A Assistant terminal superintendent.

Q What is encompassed generally in that, in your job --

A Work in coordination with the contracting stevedore together with the vessels.

Q Does Flota Mercante Grancolombiana own vessels that carry cargo between New York and Central and South America?

A Yes.

Q Do these vessels come periodically to New York to load and discharge cargo?

A Yes, they do.

Q When those vessels are in New York, who physically loads and discharges the cargo?

A Universal Stevedoring.

Q Do the crew members of the vessel load or discharge cargo?

A No.

Q Are the crew members permitted to load and discharge cargo?

A No, they are not.

Q Why is that?

A Number one, they are not qualified, number two, there is union regulations prohibiting it.

Q What union regulations are they?

A That would be the International Longshoremen's Association, they prohibit the use of foreign flag crew members.

Q I would like to show you, Mr. McGann, a group of documents and ask you if you can identify them.

(Handing)

A This is the stevedore contract we have with the stevedoring company, Grancolombiana has.

Q And that's with Universal?

A That's with Universal Stevedoring.

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Q Is that the contract that is presently in effect between the defendant and Universal?

A Yes, it is.

MR. STILES: I offer that in evidence.

MR. DOYLE: No objection.

(Defendant's Exhibit Q received in evidence)

Q I would like to show you another set of documents and ask you if you can identify it.

(Handing)

A This is a port log made up by Grancolombiana.

Q And is this the port log that was for the Ciudad Ibicua, including the voyage dated November 6, 1973?

A Yes, it is.

MR. STILES: I would like to introduce this into evidence.

MR. DOYLE: No objection.

(Defendant's Exhibit Y received in evidence)

Q What generally is shown on the port log?

A That's particularly made up for the Port of New York and it shows all the activities of the vessel from the time it arrives at the pilot station to the time it departs

to go with the stevedore activities.

Q The person that makes up the entries concerning the stevedores' activities, from where does he obtain that information?

A The daily activity sheets made up by the stevedore.

Q I show you Defendant's Exhibit K that we marked in evidence by stipulation and ask you if this is the stevedore's activity sheets?

(Handing)

A Yes, they are.

Q Could you tell us, looking at those activity sheets concerning the No. 3 hatch, what work was done on November 4th, 5th and 6th, by the stevedores?

A I got Sunday, November the 4th, we discharged from 8:00 to 12:00, then to 6:00 with one stevedoring gang.

Q Could you keep your voice up just a little bit.

A On Monday, the 5th, there was one gang discharging from 8:00 to 10:30 in No. 3. Then from 10:30 to 12:00 and from 1:00 to 9:00 p.m. we were loading in No. 3 with one gang. There was another gang that loaded in No.3 from 8:00 to 12:00 and 1:00 to 9:00.

Q So there were two gangs working on November 5th loading cargo in the No. 3 hatch; is that correct?

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A From 10:30 on. From 8:00 to 10:30 there was one gang discharging.

On the 6th of November, No. 3, we loaded -- excuse me, two gangs from 8:00 to 12:00 and from 1:00 to 5:00.

Q All right. That's as far as we have to go is the 6th.

THE COURT: What time was that on November 6th?

THE WITNESS: to 5:00 p.m., your Honor.

THE COURT: From when to when?

THE WITNESS: From 8:00 to 12:00 and from 1:00 to 5:00 with two gangs.

Q I would like to show you a second document that we have marked into evidence by consent, Defendant's Exhibit I, and ask if you can tell us what that is.

(Handing)

And I will ask you some questions on it.

A This is a final stowage plan.

Q What, in general, is shown by the final stowage plan?

A Well, this will show all the cargo loaded at the various ports of the United States. It also -- in New York. In other words, all the cargo is on the vessel upon completion of loading.

Q In the No. 3 hatch lower hold portside, can you tell us what cargo, if any, that was loaded in the forward end was loaded in New York?

A Cargo for Callao Bona Ventura, Cartagena.

Q Can you tell by just looking at the stowage plan that that cargo that you just told us of was loaded in New York?

A Yes. We have a key that we use and a broken line indicates if cargo loaded in New York whereas the solid line shows it was loaded at an outside port. It is indicates on the top of the plan.

Q In the portside square of the hatch, what is the forwardmost cargo shown in there?

A That is the Callao.

Q You said that was loaded in New York from that stowage plan?

A Yes.

Q What is immediately behind that cargo?

A The cargo for Bona Ventura.

Q What kind of cargo is immediately behind that Callao cargo?

A You mean the Bona Ventura cargo?

Q Yes. No, of the Callao cargo, what is right behind the Callao cargo? What type of cargo?

A Rolls of paper for Bona Venture. Packages of general cargo.

Q When cargo is to be loaded on a vessel in New York to be taken to another port, who is the cargo delivered to at the pier?

A To the stevedore, to Universal Stevedore.

Q Are there any documents that show the passage of this cargo to the stevedores from the trucker or whoever brings them in?

A Yes, either the freight broker or the truckman himself will have with them dock receipts which are submitted to the clerk, the stevedore clerk at the pier.

Q Then what does the stevedore clerk do with those dock receipts?

A After proper receiving they are given to a checker at which time the checker checks the cargo out of the truck, or whatever method of conveyance the cargo is delivered.

Q I would like to show you a document that is marked Defendant's Exhibit R for identification and ask you if you can tell us what that is.

(Handing)

A That is a copy of a dock receipt.

Q And what cargo does that dock receipt show?

A It shows receiving 164 rolls of newsprint paper.

Q And does it have a description of the size of the newsprint on that document?

A Yes. On the back they show the measurements that the checker takes when the cargo is received.

Q What are the measurements?

A Three foot by two by three foot by two by two foot eight.

Q Are there any documents made by which you can tell when cargo is loaded on to the vessel?

A Well, there is a hatch tally that the checker makes alongside the hatch. There is a checker assigned to each gang alongside the hatch that they are loading. And he in turn as the cargo is brought along shipside, takes the dock receipt number and the commodity and the quantity.

MR. STILES: I would like to introduce the dock receipt into evidence.

MR. DOYLE: No objection.

(Defendant's Exhibit R received in evidence)

Q I would like to show you Defendant's Exhibit O marked for identification and ask you if you can identify it.

(Handing)

A That is the hatch tally made up by the checker

alongside the ship.

Q What cargo is shown by that particular hatch tally? To what port is it going?

A To the Port of Callao.

Q Does the hatch tally tell you when that cargo was loaded?

A It would show the date it was loaded, yes.

Q What date was the Callao cargo loaded?

A November the 5th.

Q And does it indicate on that hatch tally where that particular cargo was stowed?

A Yes, it shows it was stowed in 3 lower hold forward offshore.

Q The No. 3 lower hold --

A Lower hold forward offshore.

Q And does that correspond with the final stowage plan showing Callao cargo in the No. 3 lower hold?

A Yes, it does.

Q Offshore?

A Yes, it does.

Q Forward?

A Yes.

MR. STILES: I would like to mark these hatch tallies in evidence.

MR. DOYLE: No objection.

(Defendant's Exhibit O received in evidence)

BY MR. STILES:

Q I would like to show you one last document that is marked Defendant's Exhibit P for identification and ask you if you can tell us what this is.

(Handing)

A This again is a hatch tally for cargo loaded alongside the vessel.

Q What cargo is shown on that particular hatch tally?

A This is cargo for Bona Ventura and consists of 164 rolls of paper.

MR. STILES: I would like to mark this into evidence.

MR. DOYLE: No objection.

(Defendant's Exhibit P received in evidence)

BY MR. STILES:

Q Does this hatch tally show when these 164 rolls of paper were loaded on board the vessel?

(Handing)

A November the 6th.

Q And where were they loaded?

A 3 lower hold forward portside square.

Q The No. 3 forward --

A Portside square.

Q And does that correspond to the final stowage plan that is in front of you?

A Yes, it does.

Q In looking at this stowage plan that is in front of you, is there any cargo forward of the 164 rolls of paper that was not loaded in New York?

A No.

Q And in fact is all the cargo that was loaded forward of the rolls the cargo destined for Callao?

A Yes, it was.

Q Who makes up the final stowage plan?

A Stevedore, Universal Stevedoring.

Q When do they give it to your company or to the vessel?

A It's finished, the loading is finished that evening and given to the vessel prior to sailing.

Q Is there anything on that document which shows when the final stowage plan was given to the vessel?

A We have in the left-hand corner here there is a receipt that the stevedore gets signed by the mate that he

has rec ed same.

Q And when was that received by the mate?

A November the 9th.

Q Who makes up the dock receipts?

A They are made up by the freight broker normally.

Q And then they are handed to the stevedore?

A And handed to the stevedore to check it.

Q And the hatch tallies are also made up by the stevedore?

A That's correct.

MR. STILES: I have no further questions.

THE COURT: How long will you be on cross, Mr. Doyle?

MR. DOYLE: I have no questions of this witness, your Honor.

THE COURT: All right. The witness is excused and we will take our mid-morning recess.

(Recess)

* * *

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The jurors can go. Then I will hear the lawyers in the other matter.

Good night all.

(Jury left the courtroom - 4:15 p.m.)

THE COURT: Mr. Stiles and Mr. Doyle.

With the consent of the plaintiff's counsel, the defendant renews at the close of the entire case the motions that he made at the close of the plaintiff's case for directed verdict upon the various grounds previously set forth.

MR. STILES: Yes, sir, thank you.

(Adjournment to Thursday, July 29, 1976 at 10:45 a.m.)

* * *

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ANTHONY MUNOZ

V. 75 Civ. 2409

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

July 29, 1976
1:30 p.m.

oOo

(Jury present.)

THE CLERK: Ladies and gentlemen, this court is about to instruct the jury. All persons wishing to leave may do so now. Those electing to stay must remain seated until the completion of the court's charge.

Marshal, will you secure the door.

THE COURT: Members of the jury: We are now at the point in this somewhat short trial where you are soon to undertake your final function as jurors, and that is, as I told you at the time of your original selection as jurors, to determine the disputed fact issues. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence; you determine the credibility of witnesses; you resolve such differences as there may be in testimony and you draw

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whatever reasonable inferences may be warranted from the facts as you determine them.

My function at this point is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you find them.

In your determination of the facts, you are to rely upon your own recollection of the evidence. Anything the lawyers may have said during the progress of the trial, included in a question put to a witness or advanced in summation before you the other day is not to be taken in place of or in substitution for your own independent recollection. So, too, if during the course of these instructions I should make any statement of fact which does not accord with your own recollection, again you will rely upon your independent recollection. That governs at all times.

The plaintiff, Anthony Munoz, brings this action to recover damages for injuries sustained against Flota Mercante Grancolombiana, the owner of the vessel the S.S. Ciudad de Ibaque, on which he was working as a hold-man in loading and unloading cargo in the hatch of the ship.

Munoz was not employed by the ship but by the Universal Maritime Services, to which we shall refer as

UMS.

The ship owner had contracted with UMS to do the stevedoring work on the ship, that is, its loading and unloading while in port. Munoz, however, sues the ship owner to recover for his claimed injuries.

As an employee of the stevedore, in order to carry on his work of unloading aboard the vessel, Munoz obviously had to do this on board the ship. Accordingly, he was what the law terms an invitee of the ship owner.

In this circumstance, the ship owner was under the duty to exercise reasonable care to provide him with a reasonably safe place to work. This duty of the ship owner to Munoz, the plaintiff, was entirely independent of and separate from any duty that UMS, his employer, owed him.

It is the plaintiff's contention that the defendant ship owner failed in his duty and as a proximate result he sustained his injuries.

You understand, of course, that since the ship owner is a corporation its acts through its officers and agents, and the ship owner is responsible for the acts and conduct of such officers and agents performed or omitted within the scope of their respective duties.

The ship owner denies that in any respect it

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failed in its duty to plaintiff.-- to the contracy, it contends that whatever injuries plaintiff sustained were due solely and only to his own carelessness and negligence or solely that of his employer, in which event, if you find this to be so, plaintiff may not recover.

Additionally, the ship owner contends that even if you find that it was negligent, the plaintiff himself was also negligent and, accordingly, damages are to be reduced.

The fact that plaintiff met with an accident and injury, if you do so find, does not by itself entitle him to recover damages.

The ship owner was not an insurer of the plaintiff's safety.

The defendant ship owner may be held liable only if plaintiff establishes by a fair preponderance of the evidence that the ship owner violated its duty to exercise reasonable care to provide plaintiff with a reasonably safe place to work.

The burden of proof is upon the plaintiff, that is, Munoz. As I said, he must establish this by a fair preponderance of the evidence.

Now, what do we mean by the term a fair preponderance of the evidence? This refers to the quality of

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the evidence, the weight of the evidence, and not to the number of witnesses.

If you find that the evidence presented by the plaintiff, who has the burden of proof, is more persuasive and more convincing than that opposed to it, you may say that the plaintiff has sustained his burden. In short, if his evidence persuades you that the occurence of an essential fact was more likely or probable than its non-occurrence, then he has met his burden. But if, upon a review of all the evidence, the weight is in favor of the defendant or is in balance, then the plaintiff has failed to sustain his charge and your verdict should be for the defendant.

Now let us turn to the facts.

First, let us define negligence. Negligence is doing that -- or failing to do that -- which a reasonably careful or prudent person would not have done -- or would have done under all the circumstances of a given case.

Plaintiff's claim, as advanced by his counsel during his summation, is based upon the following:

That when plaintiff arrived for work the morning of the accident at the No. 3 hatch, one tier of cargo leading in the direction of the emergency hatch was already in place, having been stowed the day previous when he was

not at work; that while he and his co-workers were placing another stow of round reels, one of them was caught in another reel and tipped over; Munoz went to get a crowbar to straighten this out; to do so, he walked on plywood which had been placed over previously stowed cargo onto sort of a pathway or route which led in the direction of the escape hatch; that he walked on this path on separation paper, bags, cargo and crates. According to his testimony the path was uneven or unsteady; that after he had walked some six or seven feet and bent over to grab for the crowbar, everything went under him -- as he described it, cartons, cases and separation paper gave way, causing him to fall; that his foot shifted from under him; that he didn't know if his foot went through a hole or cargo shifted, or if he fell between spaces of cargo. He was just not sure.

His claim is that the unevenness of the path to the escape hatch along which he walked and the use of separation paper to cover cargo constituted a dangerous condition.

Basic to plaintiff's recovery is a finding that in fact a dangerous condition existed. If such a condition existed, not readily apparent to persons exercising reasonable care, and if the ship owner had actual or

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constructive notice of the dangerous condition, then the ship owner was required to give such persons warning of the danger and to correct the condition.

There is no proof that any ship's officer or crew member was present during the loading operation at the time of or at any time prior to the accident, so that the ship's officer was aware or had actual notice of the condition of the path leading to where plaintiff attempted to reach the crowbar.

Plaintiff claims, however, that the ship's officers can be charged with constructive notice, that is, that in the exercise of reasonable care they should have known of the condition, assuming you find it was dangerous.

Plaintiff's argument that the ship had constructive notice runs somewhat along this line: That since the stowage was near or close to the escape or emergency hatch a ship's officer should have inspected the emergency hatch regularly to make sure it was safe in the event of any emergency; that had this been done the condition would have been discovered and the ship's officer in a position to warn the men working there or to have corrected the condition.

Accordingly, plaintiff contends the failure to do so was a breach of duty to supply him with a reasonably

safe place to work.

The ship owner denies that it failed in any way in its duty to plaintiff and brands his claim as unrealistic. It emphasizes it engaged qualified and experienced stevedores to load, unload and to stow cargo in a reasonably safe manner. It argues there is no evidence that it played any part in the stowage of the cargo or placing separation paper over it.

Next the ship owner denies that a dangerous condition existed in the path that plaintiff took leading to where the crowbar was. Thus, if you find there was no dangerous condition that would end the case.

The defendant further argues even assuming a dangerous condition existed not only is there no proof that it had actual notice but there is no basis upon which to charge it with constructive notice, that is, that it could have reasonably learned of it.

It stresses there is no evidence when the escape hatch was last inspected prior to the accident, assuming an inspection was required by the ship owner so as to charge it with constructive notice of any alleged dangerous condition of the path leading to the hatch. Accordingly, even assuming a dangerous condition existed, if you find the ship owner did not have actual or constructive notice

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thereof, it may not be held liable.

Finally, the defendant contends plaintiff was engaged in the discharge of his ordinary duty which called for him to use care for his own safety, that he was an experienced longshoreman, that he was aware of how the cargo was loaded and knew separation paper covered cargo, that the accident was caused solely and only by his own carelessness or solely by the negligent conduct of the stevedores which, if you do so find, would exonerate the defendant from any liability.

However, if you find that the ship owner was negligent and further find that the stevedore was, too, that is, if their concurrent, joint negligence was a proximate cause of the accident as a result of which plaintiff sustained his injury, in that event the ship owner would be liable to plaintiff.

If you find that plaintiff himself, or the stevedores, or both, were solely responsible in causing the accident, and defendant ship owner in no respect contributed thereto, the ship owner is free from liability. That is, in that circumstance it cannot be held liable. You are called upon to decide whether under all the circumstances plaintiff has sustained his burden of proving that defendant breached its duty to plaintiff to exercise reasonable

care to furnish him with a reasonably safe place in which to work.

This requires you to pass upon the credibility of witnesses. In the search for truth, you use your plain, everyday common sense. As I often tell jurors, when you walk in the door of this courtroom and you sit in judgment in a case, you do not leave your common sense outside the courtroom door.

You have seen the witnesses on the stand and deserved their manner of testifying and their demeanor. You ask yourselves did the witness tell a forthright, truthful story? Did it appear he was accurate? Did it appear that he was biased or prejudiced? If a witness has an interest in the outcome of a case you may take that into consideration in passing upon his credibility. The plaintiff obviously is an interested witness. In that circumstance, you may take that into account. However, it by no means follows that simply because a person has an interest in the case he is not capable of telling a truthful story.

If you find that any witness, and this applies to plaintiff's and defendant's witnesses, it also extends to the doctors, to whom I shall presently make reference, willfully testified falsely as to any material

fact, you have a right to reject the testimony of that witness in totality or to accept only that part or portion which commends itself to you or which you find corroborated by other evidence in the case.

You reach the question of damages only if on all the evidence you find plaintiff has sustained his burden that the ship owner negligently breached its duty to supply plaintiff with a reasonably safe place to work. Of course, if he has failed, as I have already told you, that would end the case and you return a verdict for defendant. Incidentally, the fact that I instruct you on the element of damages does not mean you are to assume this court entertains any view as to how you are to decide the case or that the plaintiff is entitled to a verdict. That is a matter for your determination. I am required to instruct you on the issue of damages in the event you do reach that point.

There is, of course, on the question of damages no mathematical formula from which you can determine damages with precision. Damages must be purely compensatory and reasonable, neither inadequate nor excessive. Plaintiff, if you find he has sustained his burden of proof, would be entitled to the following: (1) Pain and suffering from the time of the occurrence of the accident to the present,

and you may take into account the extent, nature of his injuries, and permanency, if any; and (2) loss of earnings.

I am sure that it was evident to you that there is a sharp difference of opinion between the doctors as to the extent of the required treatment of plaintiff and how long he was necessarily disabled from work. The defendant's doctor contends in substance there was gross exaggeration insofar as the more than 60 treatments were required for a simple fracture of the finger and the sprain of the wrist and that plaintiff was well able to return to work long before he actually did, which I believe was on July 3, 1975.

Plaintiff's doctor, who treated him, took a different view of the need for extended treatment and the period during which he claims plaintiff was disabled from returning to his job. Here you have to resolve a question of credibility as between two professional men. It may seem strange to you that as laymen you are called upon to resolve a conflict between medical men, but since their testimony concerns fact issues, the nature and extent of injury, the duration of injury, the period of time that one is disabled from work, as judges of the facts you are called upon to do so.

You resolve the conflict between the doctors in

the same way you determine other factual issues arising out of testimony of ordinary or lay witnesses. In effect, you pass upon the credibility of these professional witnesses. Did his professional judgment appear to be sound and persuasive. You are required to consider each expert's opinion but give it such weight as you think it deserves. You may reject entirely the testimony of the doctors if you conclude that the reasons given in support of an opinion are unsound.

You may make an award only for those items when you find were proximately caused in whole or in part by the accident. In short, the defendant cannot be charged for any injury or physical condition not attributable to the accident. In the event you have concluded that plaintiff has sustained his claim and determined the amount of damages, your task is not ended.

While plaintiff did not assume the risk of an unsafe place to work, he was, however, under a duty to exercise reasonable care for his own safety. Accordingly, should you find that the accident was contributed to in part by plaintiff's own conduct, then to the extent that he contributed thereto the damages should be reduced proportionately. In other words, if, for example, you should find the accident was caused let us say 50 per cent

by reason of the plaintiff's own conduct, accordingly, the damages would be reduced to that extent. On this issue, however, that is, the defendant's claim of the plaintiff's own contributory negligence, the burden of proof is upon the defendant and unless the defendant has sustained the burden of proof, then there may be no dimunition in the amount of the award.

You should not be concerned, and I am sure you will not be concerned, with who the plaintiff is or what the defendant is. The fact that the defendant is a corporation must not be taken into account in your deliberations at all. All litigants stand as equals before the bar of justice. That is so, whether they are individuals, corportions or the government of the United States -- it matters not, all are equal in litigation.

Your duty is to try the issues in the case fairly and impartially and without fear or favor. Each juror is entitled to his or her own opinion but you are required to exchange views with fellow jurors. That is the very purpose of your jury deliberation. It is your duty to consider and discuss the evidence and review the testimony or witnesses.

If you have a point of view which differs from that of fellow jurors, and upon discussion and further

consideration you are persuaded that your point of view should yield in the light of the evidence and the law, there is no reason why you should not change an originally held point of view provided, however, your ultimate vote always expresses your conscientious judgment as to how the case should be decided.

In order to return a verdict, it must be unanimous.

Now, you might wait. I will hear counsel.

Before counsel come up, I am going to give you a form of verdict which is called a special form of verdict which reads as follows:

1. Do you find plaintiff has sustained his burden of proof of negligence? Answer yes or no. If your answer is no, then there is no need to answer the remaining questions and you return a verdict for the defendant. That would end the case.

2. Do you find that the defendant has sustained its burden of proof, that is, that plaintiff by his own conduct contributed to the accident? And there is a space to answer yes or no.

3. If your answer to question 2 is in the affirmative, to what extent? There is a blank for a percentage.

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4. If in answer to question 1 you have found that plaintiff has sustained his claim, what is the total amount of damages? And there is a space for an answer.

5. If you found defendant sustained its claim that plaintiff himself contributed to the occurrence, what sum have you deducted from the above? Again a space for an insertion; and

6. The net amount of the verdict.

You might wait until I see counsel at the bench, if you want to come up.

(At the bench.)

THE COURT: Mr. Doyle, you may state your exceptions.

MR. DOYLE: The only remark I have concerning the charge, your Honor, is the statement on the factual issues. I don't know how important this is, but it might confuse the jury to some extent. Your Honor stated that the man came down there and found a plywood floor laid over the first tier and that he was walking on the plywood floor and I think you indicated it was part of a path.

THE COURT: That he took a path. That follows his testimony closely according to my notes. In any event, I am not going back over it. I told the jury it

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is their recollection of the evidence. If I made any statement that doesn't accord with their own recollection they will rely upon their own.

MR. DOYLE: I have nothing further.

THE COURT: Mr. Stiles, you may state your exceptions.

MR. STILES: One of the exceptions, your Honor, is I don't think the charge was clear it is the defendant's contention that the plaintiff testified that he was not on the path when he fell, he was on the cargo itself which was covered by separation paper. I don't know if that makes any difference in your viewpoint of the law or not.

THE COURT: Again I will tell the jury, if you want me to, it is their recollection that governs just as I told Mr. Doyle.

MR. STILES: I have quite a few legal exceptions.

THE COURT: State them now.

MR. STILES: I take exception to the court's not charging that reasonable care does not require ship's officers to inspect each hold daily to be sure that the stevedore has properly performed the work which it was hired to perform and that they inspect so thoroughly that they discover a danger which is not readily apparent and

which is not appreciated by the longshoremen themselves.

I further take exception to the court not charging that the ship owner did not have an obligation under the facts of this case to inspect cargo loading to an escape hatch ladder even if you accept the fact that the plaintiff was on a path leading to an escape hatch ladder.

I take exception to the court not charging that the ship owner does not have a duty to supervise the loading and/or discharging of the stevedore.

I take exception to the court not charging that if you find that -- even if you find that there was a defect under separation paper, that the plaintiff said he stepped on, that since there is no -- and it is a latent defect, then if you find that is so you must find for the ship owner.

I take exception to the Judge's charge that there is a concurrent duty to provide a safe place to work under the facts of this case.

THE COURT: I didn't say there was a concurrent duty to provide a safe place to work. Go ahead. You are going over a lot of papers. Go ahead and finish with them.

MR. STILES: I take exception to the court not charging that if the plaintiff's accident was caused by

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an unsafe method or manner of loading by the stevedore you must find without more for the defendant ship owner.

I take exception to the court's not charging that primary responsibility to make sure that the longshoreman has a safe place to work is on the stevedore and not on the ship owner.

THE COURT: Where is that request to charge?

MR. STILES: It is in here. I cannot find it.

THE COURT: You have taken a long time now. Let's finish this.

MR. STILES: I take exception to the court not charging that there is a duty with regard to ladders in the hatches, only that the stevedore has a duty to make certain that there is one ladder accessible per gang in the hatch and that there was uncontradicted testimony there was such a ladder in the hatch under the circumstances of this case and therefore there was no duty upon the ship owner to inspect any pathway to an escape hatch ladder.

The only other thing I have is just to protect the rule, I know it is ruled against me, but I take exception to the Judge not asking the jury to find what percentage, if any, the stevedore's negligence caused the plaintiff's injury and to deduct that from any verdict that the plaintiff may get.

THE COURT: All right.

(In open court.)

THE COURT: Members of the jury, I again want to stress that with respect to fact issue, as I did in my main charge, that it is your recollection that governs at all times. It isn't anything the lawyers say, as I tried to say, it isn't anything the court may have said with respect to any fact issue. If your recollection differs from that of the court, you will follow your own independent recollection. That is controlling at all times.

(Marshal sworn.)

THE COURT: I think we have to excuse the alternate juror. You don't need this on the record.

(Discussion off the record.)

THE COURT: You go with the marshal.

(At 2:05 p.m., the jury retired to deliberate.)

(Court's Exhibit 1 marked.)

(At 3:05 p.m., the jury returned to the courtroom.)

THE COURT: I have a note from the jury which reads as follows:

"Question 4. Are we to determine in the actual amount of damages?"

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The answer is yes.

Then I went on to say that after you determine the total amount of damages you consider whether or not the defendant has sustained its claim that the plaintiff himself contributed to the accident, and if you find that it did sustain its burden then the percentage. That is where I gave you the example, that if, for example, it was 50 per cent you deduct that from the total amount and the result is the net verdict. On the other hand, if you find that the defendant did not sustain its burden that the plaintiff himself contributed by his own negligence to the accident, you don't deduct anything from the total amount.

Now, is that clear to you? In other words, in 4, you put in first the total amount of damages, and then if you find that the plaintiff himself contributed to it, you deduct whatever the percentage is.

(At 3:08 p.m., the jury retired to further deliberate.)

(At 4:00 p.m., the jury entered the courtroom.)

THE CLERK: Members of the jury, please answer to your presence as your name is called.

(Jury roll call.)

THE CLERK: Madam Forelady, has the jury agreed

upon a verdict?

THE FORELADY: Yes, we have.

THE CLERK: How do you find as to question 1? Do you find the plaintiff has sustained its burden of proof of negligence?

THE FORELADY: We have answered question 1 yes.

THE CLERK: How do you find as to question 2?

THE FORELADY: No.

THE CLERK: How do you find as to question 3?

THE FORELADY: 13,000.

THE CLERK: As to question 4?

THE FORELADY: 13,000.

THE CLERK: As to question 5?

THE FORELADY: Blank.

THE CLERK: As to question 6?

THE FORELADY: 13,000.

THE CLERK: Madam Forelady, listen to your verdict as it stands recorded. As to question 1 you say yes, plaintiff has sustained his burden of proof, as to question 2, no, that the plaintiff has sustained its burden of proof that is by the plaintiff by his own conduct contributed to the accident; as to question 4, 13,000, as to question 5, blank, net amount of verdict, 13,000. And so say you all?

JURORS: Yes.

THE COURT: Members of the jury, before you go -- you don't need this on the record.

(Off the record.)

(The jury left the courtroom.)

MR. STILES: Before I forget, may we have the requests to charge marked as a Court Exhibit?

THE COURT: Yes.

MR. STILES: Secondly, I would like at this time to make a motion to set aside the jury's verdict as being clearly against the evidence that was presented in this case.

(Discussion off the record.)

THE COURT: You want to submit briefs or anything?

MR. STILES: Yes, I would like to.

THE COURT: How much time do you want?

MR. STILES: I am only going to need -- how about Wednesday? Is Wednesday too long?

THE COURT: Are you going to order the minutes or are you going to do it without minutes?

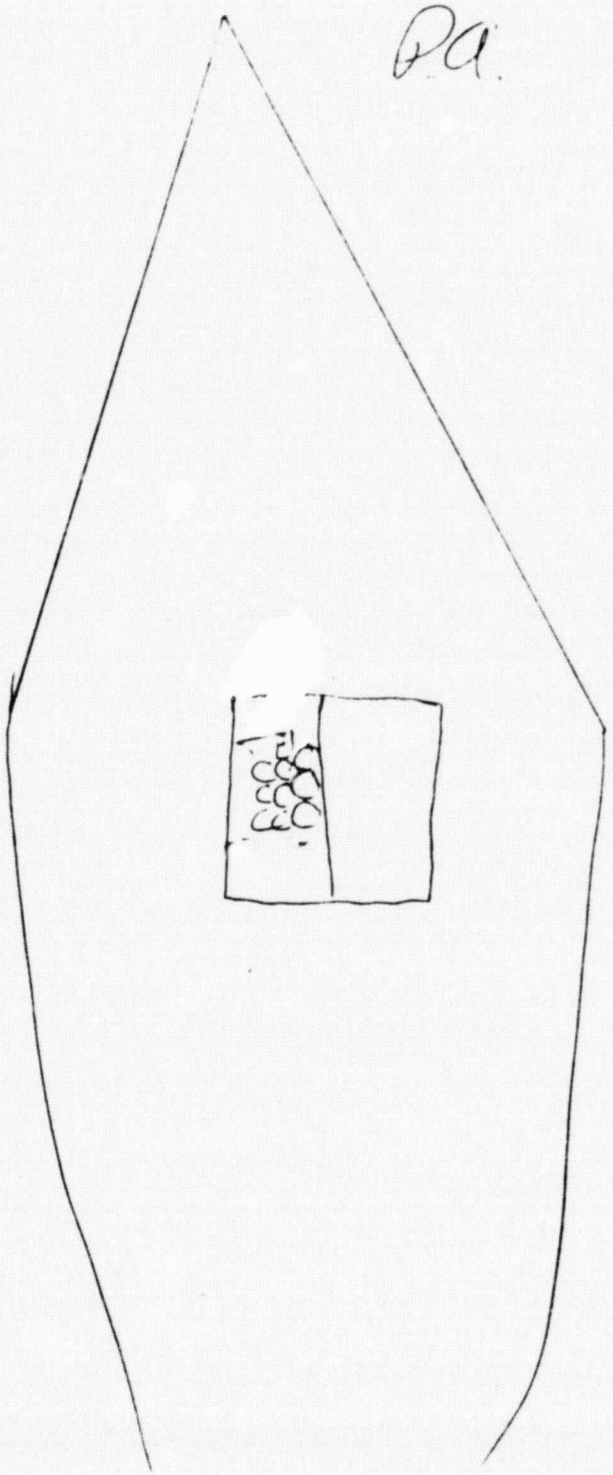
MR. STILES: I am going to need the minutes.

THE COURT: Suppose we put it down for Friday at 2:30. Get your briefs in the day before and exchange briefs.

(Case closed.)

DEFENDANT'S EXHIBIT A.

Deft's Ex I for ID
12/14/15
DA.



Surveyed Dec 1947

Defendant's
Exhibit No. 1

A id

DEFENDANT'S EXHIBIT J.

AGENCIA MARITIMA GRANCOLOMBIANA S.A.

PUERTO / PORT OG

Claim

BUQUE / Vessel: JUDITH DE BLOHM — VIAJE No. / Voy. No. — PUERTO / Port

ARRIBO DE / Arrived from: PUERTO BOLIVAR — FECHA / Date: 11/7/73 — (*) HORA / Hour: 10:[illegible] — CALADO: PROA / Draft Fwd: [illegible] POPA / Aft: 4.00

ATRACO AL: / Docked at: PIER 3 — FECHA / Date: 11/8/73 — (*) HORA / Hour: [illegible] — CAMBIADO AL: / Shifted to:

FECHA / Date: — (*) HORA / Hour: — CAMBIADO AL: / Shifted to: — FECHA / Date: — (*) HORA / Hour:

MUELLE SECO: ENTRO, FECHA / Dry Dock, Entered, Date: — (*) HORA / Hour: — SALIO, FECHA / Left, Date: — (*) HORA / Hour:

COMBUSTIBLE: BARRILES, AL ARRIBO / Bunkers on Barrels, On arrival: [illegible] 1 0 — TOMADO EN PUERTO / Bunkered: [illegible] — AL ZARPE / On sailing: 810 T.

DESCARGUE COMENZO: FECHA / Discharge Started: Date: 11/8/73 — (*) HORA / Hour: 08:00 — DESCARGUE TERMINO: FECHA / Discharge Finished: Date: 11/9/73 — (*) HORA / Hour: 14:00

CARGUE COMENZO: FECHA / Loading Started: Date: 11/9/73 — (*) HORA / Hour: 08:00 — CARGUE TERMINO: FECHA / Loading Finished: Date: 11/9/73 — (*) HORA / Hour: 11:00

DESCARGO: TOTAL KILO-TONS

Discharged: Total Tons { Short ☐ / Long ☐ 7 0 — PIES CUB. / Cu./Ft. — TONELADAS PAGABLES: / Revenue Tons: — PESO / Wgt. 7 1 8 — MEDIDA / Meas.

CARGO: TOTAL KILO-TONS

Loaded: Total Tons { Short ☐ / Long ☐ 2 [illegible] 9 9 — PIES CUB. / Cu./Ft. — TONELADAS PAGABLES: / Revenue Tons: — PESO / Wgt. 2 [illegible] 9 — MEDIDA / Meas. [illegible] 0 0

ZARPO PARA / Sailed for: SANTA MARTA — FECHA / Date: 11/9/73 — (*) HORA / Hour: 2[illegible] — CALADOS: PROA / Draft Fwd: [illegible] POPA / Aft: 6.00

(*) USESE DIA DE 24 HORAS — Use 24 hour clock

FECHA / Date	BODEGA # / Hatch #	*HORA/Hours DE/From	HASTA/To	DESCRIPCION DE LAS OPERACIONES / Description of the Operations
11/4/73		08:00		ON ARRIVAL
11/9/73			11:00	ARRIVED AMBROSE
				ARRIVED QUARANTINE
				BALLAST 900
				TUGS: HARIN MONA
D I S C H A R G I N G				
11/4/73	2	08:00	12:00	DISCHARGING
		13:00	18:00	"
	3	08:00	12:00	"
		13:00	18:00	"
	4	08:00	11:00	"
	5	08:00	12:00	"
		13:00	18:00	"
	5	11:00	12:00	"
		13:00	18:00	"
	2	08:00	09:30	SHIFT OPC UNDXD PER INSTR. TO DISCH. F.Y. CH
	4	08:00	09:00	SHIFT OPC TAUCH-CHAT. PER INSTR TO DISCH F.Y.
	2	09:30	10:00	SBY-CLEAR DEBRIS TO OPEN T/D COVERS
	3	15:30	15:50	SBY-STARBOARD BUNKER JAMMED
11/5/73	2	08:00	09:30	DISCHARGING
	3	08:00	10:30	"
	5	08:00	11:00	"
		13:00	14:00	"
L O A D I N G				
11/5/73	2	09:30	11:00	LOADING

./.

DEFENDANT'S EXHIBIT J

FLOTA MERCANTE GRANCOLOM[illegible] S.A.

PORT LOG

PAGINA No.
Page No.

BARCO Vessel CIUDAD DE HAGUE VIAJE No. Voy No. S-8 PUERTO Port NEW YORK

FECHA Date	BODEGA # Hatch #	*HORA/Hours DE/From	HASTA/To	DESCRIPCION DE LAS OPERACIONES Description of the Operations
11/5/73	2	13:00	21:00	LOADING
	3	10:30	12:00	"
		13:00	21:00	"
	3	03:00	12:00	" ✓
		13:00	21:00	" ✓
	4	08:00	12:00	"
		13:00	21:00	"
	4	08:00	12:00	"
		13:00	21:00	"
	5	14:00	21:00	"
	4F	08:00	08:25	SBY-CREW OPEN HATCH
	3A-4F	13:00	13:25	SBY-CRANES OUT
	4F	08:30	09:00	SBY-CRANE OUT
11/6/73	2	08:00	12:00	LOADING
		13:00	17:00	"
	3	08:00	12:00	" ✓
		13:00	17:00	"
	3	08:00	12:00	" ✓
		13:00	17:00	"
	4	08:00	12:00	"
		13:00	17:00	"
	5	08:00	12:00	"
		13:00	17:00	"
11/7/73	2	08:00	12:00	LOADING
		13:00	18:00	"
	3	08:00	12:00	"
		13:00	18:00	"
	3	08:00	12:00	"
		13:00	18:00	"
	4	08:00	12:00	"
		13:00	18:00	"
	5	08:00	12:00	"
		13:00	18:00	"
	4	15:00	16:00	SBY-TEST H/L CRANE BY HOISTING CONT. & CHECK BRAKE.
	4	13:00	15:00	REMOVE DEC FWD. DISCHD
		16:00	16:30	" " "
	3A	16:00	16:30	" " "
	3F	16:00	16:30	SBY-AWAIT CARGO
11/8/73	2	08:00	12:00	LOADING
			/.	

DEFENDANT'S EXHIBIT J

[illegible] MERCHANT CHARTERING S.A.

CONTINUACION
Continuation Sheet

INFORME DE PUERTO
PORT LOG

PAGINA No.
PAGE No.

BARCO
Vessel CIUDAD DE IBAGUE

VIAJE No.
Voy. No. C-8

PUERTO
Port [illegible] YO [illegible]

FECHA Date	BODEGA # Hatch #	*HORA/Hours DE/From	HASTA/To	DESCRIPCION DE LAS OPERACIONES Description of the Operations
11/8/73	3	08:00	12:00	LOADING
		13:00	18:00	"
	4	08:00	12:00	"
		13:00	18:00	"
	5	08:00	12:00	"
		13:00	18:00	"
	5	09:00	10:00	DISCH. CHILL CARGO PREVIOUSLY LOADED PER INS
	6	14:00	16:30	LOAD MAIL
11/9/73	3	08:00	11:00	LOADING
				ON SAILING
				FRESH WATER 190
				BALLAST 900
				TUGS. VICTORIA McALLISTER

BEST COPY AVAILABLE

DEFENDANT'S EXHIBIT K.

GRANCOLOMBIANA (NEW YORK), INC. NEW YORK, N. Y.

HATCH TALLY

Port _____ Pier _____

Dock _____ Started _____

Lighter _____ Finished _____

Vessel IBAGUE Date 11-9-73

DOCK RECEIPT	COMMODITY	AMOUNT	WEIGHT
RECD	CARGO PLANS		
	TOTAL		
Stowed _____	CHECKER		

Page No. F 25723

OPT. NO. 10
EPCO 800 BOOKS

OVERSIZE FOLDOUT(S) FOUND HERE IN
THE PRINTED EDITION OF THIS VOLUME
ARE FOUND FOLLOWING THE LAST PAGE
OF TEXT IN THIS MICROFICHE EDITION

SEE FOLDOUT NO. [redacted]

DEFENDANT'S EXHIBIT K

UNIVERSAL TERMINAL & STEVEDORING CORP.

EXTRA LABOR DETENTIONS

M/S IBAGUE' VOY # 7 DISC/~~LOG~~ DATE SUN 11-4 19 73

Hatch No. 2

Started 930 AM/~~PM~~

Completed 10 AM/~~PM~~

No. of men _____

___ Shift Dunnage
___ Shift Cargo
___ Disc/Load Outport
___ Rig/Unrig Tents
___ Rig/Unrig H/L
___ Winch Delay
___ Weather
___ Guarantee (ILA)

X SBY- CLEAR DEBRIS TO OPEN T/D COVERS.

Karl
A-12 (FOREMAN/SUPERINTENDENT)

(OFFICER ON DUTY)

UNIVERSAL TERMINAL & STEVEDORING CORP.

EXTRA LABOR DETENTIONS

M/S IBAGUE' VOY # 7 DISC/LOG SUNE 11-4 19 73

Hatch No. 3

Started ~~AM~~/PM 330

Completed ~~AM~~/PM 350

No. of men _____

___ Shift Dunnage
___ Shift Cargo
___ Disc/Load Outport
___ Rig/Unrig Tents
___ Rig/Unrig H/L
___ Winch Delay
___ Weather
___ Guarantee (ILA)

~~X~~ SBY- STBD RUNNER JAMMED.

Karl
A-12 (FOREMAN/SUPERINTENDENT)

(OFFICER ON DUTY)

DEFENDANT'S EXHIBIT K

RIGS 8 OUT

	GROSS	X/L	DET.	NET	MAN HOURS
MON. 11-5-73	62	—	1 3/4	61 1/4	1360 6/12
TUES. 11-6	40	—	—	40	860
7	45	3	1 6/12	40 6/12	954
8	31	3 6/12	—	27 6/12	652
FRI. 9	3	—	—	3	63
	182	6 6/12	3 3/12	172 3/12	3889 6/12

21.4

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 1

DAILY WORKING REPORT

S/S IDAGUE

SIGN. DATE 11-5-73

SERVICE

LDG. [redacted]

VOYAGE 8 OUT

PIER 32A

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Genera Net
2		930-12N 1-9P	LOADING	6 6/12	4				
3		1030-12N 1-9P	— " —	5 6/12	4				
3		11-12N 1-9P	— " —	8	4				
4		8-12N 1-9P	— " —	8	4				
4		8-12N 1-9P	— " —	8	4				
5		2-9P	— " —	3	4				
4P		8-825A	SBy. CREW OPEN HATCH	5/12			5/12		
3A-4F		1-125P	SBy. CRANES OUT	10/12			10/12		
4P		530-9	SBy. CRANE OUT				6/12		
			MAN HOURS						
		S.T.	844 6/12						
		O.T.	387						
		M.H.	129						
			1360 6/12 - TOTAL						
			Total	39	24		12/2		61 6/12

Defendant's Exhibit No. K

SUPERINTENDENT

J. McGOVERN
TIMEKEEPER

11-5

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 2

DAILY WORKING REPORT

S/S IBAGUE

TULS DATE 11-6-73

SERVICE

LDG. ~~DIS.~~

VOYAGE 8 OUT

PIER 3 PA

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Genera Net
2		8-12N 1-5P	LOADING		8				
3					8				
3					8				
4					8				
5					8				
			MAN HOURS						
		O.T.	860 - TOTAL						
			Total		40				40

Approved

SUPERINTENDENT

J. Mc GOVERN
TIMEKEEPER

A-27

138a

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 3

DAILY WORKING REPORT

S/S LBAGUE

DATE 11-7-73

SERVICE

LDG.

VOYAGE 8 out

PIER 3 01

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Genera Net
2		8-12N 1-6P	LOADING	8	1				
3		8-12N 1-6P	— " —	8	1				
3		8-12N 1-6P	— " —	8	1				
4		8-12N 1-6P	— " —	8	1				
5		8-12N 1-6P	— " —	8	1				
4		3-4P	SBY-TEST H/A CRANE BY HOISTING CONT. & CHECKING BRAKE	1			1		
4		4.30 4.430P	RELOAD OOC/PREV DISCHGD	2 1/2		2 1/2			
3A		4.430P	" " " "	1/2		1/2			
3F		4-4.30P	SBY-AWAIT CARGO	1/2			1/2		
			MAN HOURS						
		ST	848						
		OT	106						
			954 - TOTAL						
			Total	40	5	3	1 1/2		40 1/2

Approved

SUPERINTENDENT

J. McGOVERN TIMEKEEPER

A-27

139a

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 4

DAILY WORKING REPORT

THUR. DATE 11-8-73

S/S LAGUE

VOYAGE 8 OUT

SERVICE

LDG. DIS.

PIER 3 NA

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	O/T	XL Hr.	DET Hrs.		Genera Net
2		8-12N	LOADING	4					
3		8-12N 1-6P	—"—	8	1				
4		8-12N 1-6P	—"—	8	1				
5		8-12N 1-6P	—"—	8	1				
5		9-10A	DISCH. CHILL CARGO PREVIOUSLY LOADED PER INST.	1		1			
6		2-4:30P	LOAD MAIL	2 1/2		2 1/2			
			MAN HOURS						
		ST.	588						
		O.T	64						
			652 - TOTAL						
			Total	28	3	3 1/2			27 1/2

J. McGOVERN
TIMEKEEPER

Approved

SUPERINTENDENT

A-27

140a

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 5 FINAL

DAILY WORKING REPORT

S/S LAGUE

DATE FRI. 11-9-73

SERVICE LDG DSCH

VOYAGE 8 OUT

PIER 3 PA

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Genera Net
3		F-11A	LOADING	3					
			MAN HOURS						
		S.T.	63 - TOTAL						
			Total	3					3

Approved

SUPERINTENDENT

T. McGOVERN
TIMEKEEPER

UTS Form 841

UNIVERSAL TERMINAL & STEVEDORING CORP.

A-2

STAFF

PIER 24. WEEK 11-11-73

DATE	ACTIVITY	VESSEL	TIME	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h
11/5	LOAD	CARGO	5-8	1			4		1			4		1			3		1			3		1				
11/6	LOAD	CARGO	8-5	1			8		1			8		1			8		1			8		1			8	
	TOTAL																										

DATE	ACTIVITY	VESSEL	TIME	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h	No.	Hours XL	Hours DET	Diff. o/t	Diff. m/h
	TOTAL																										

Approved

Universal Terminal & Stevedoring Corp.

DEFENDANT'S EXHIBIT K

141a

142a

DEFENDANT'S EXHIBIT K

GRANCOLOMBIANA (NEW YORK), INC.

RECEIVING REPORT

No. [illegible]

PIER _____ VESSEL _____ VOY. _____

DATE SUBMITTED _____ DATE OF ACTIVITY _____

PORTS	PREVIOUS		TODAY		FILE TOTAL		OPEN				TOTAL	
							TRUCKS		LIGHTERS			
	TONS	CUBE	TONS	CUBE	TONS	CUBE	TONS	CUBE	TONS	CUBE	TONS	CUB
					[illegible]							

	No.	TONS		TONS	CUBE
TRUCKS HANDLED			RECEIVED	[illegible]	[illegible]
LIGHTERS HANDLED			AFLOAT	-	—
VEHICLES HANDLED			ARRIVED		
HOLD ON DOCK					

OPT. 68 SM RP

DEFENDANT'S EXHIBIT K

GRANCOLOMBIANA (NEW YORK), INC.

LOADING REPORT

No. Final

PIER 3rd VESSEL [illegible] VOY. [illegible]

TONNAGE RECORD AS OF 8 A.M. _____ 19__ DATE SUBMITTED [illegible]

No. OF GANGS REPORTING AT _____ DATE OF ACTIVITY [illegible]

PORTS	Hatch No. 1			Hatch No. 2			Hatch No. 3			Hatch No. 4		Hatch No. 5		ON DECK	TOTAL
	L/H	L/T/D	U/T/D	L/H	L/T/D	U/T/D	L/H	L/T/D	U/T/D	L/H	T/D	L/H	T/D		
[illegible]															
TONS LOADED YESTERDAY (Or latest working day)															[illegible]
TONS LOADED PRIOR TO YESTERDAY															[illegible]
TOTAL NOW LOADED															[illegible]

CUMULATIVE TOTAL	TOTAL CARGO ON BOARD				SHIP'S DRAFT AT 8 A.M.			TONS TO BE LOADED	
	TONS			CUBIC FEET	POSITION	FEET	INCHES		
	HOLD	T/D	TOTAL						
LOADED YESTERDAY			[illegible]		AFT			ON DOCK	
LOADED PRIOR TO YESTERDAY			[illegible]		FORWARD			AFLOAT	
TOTAL NOW LOADED			[illegible]	[illegible]	MEAN			TOTAL	

CARGO TO BE LOADED	DOCK		AFLOAT		TOTAL	
PORTS	TONS	CUBE	TONS	CUBE	TONS	CUBE
TOTAL TO BE LOADED						

OPY. GS 10M RP

SAILING DATE _____ HOUR _____

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 1

DAILY WORKING REPORT

S/S IBAGUE'

DATE 11-14-73

SERVICE

LDG.
DIS.

VOYAGE 7 IN

PIER 3 PA

Batch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Gener. Net
2		5-12N 1-6P	-DISCHARGING		9				
3		5-12N 1-6P	— " —		9				
4		3-11A	— " —		3				
5		5-12N 1-6P	— " —		9				
5		11A-12N -6P	— " —		6				
2	22	8-9 30A	SHIFT OPC UNLOAD TEL WISR TO DISCH. N.Y CARGO		1 6/12	1 6/12			
4	23	8-9A	SHIFT OPC TRUCK - CONT. FOR WISR TO DISCH. N.Y.		1	1			
2	22	9 30-10A	SBY - CLEAR DECKS TO OPEN T/S COVERS		6/12		6/12		
3	23	3 30-3 50P	SBY - STARBOARD RUNNER JAMMED		6/12		6/12		
			MAN-HOURS						
		O.T.	810 - TOTAL						
			Total		36	2 6/12	6/12		32 6/12

Approved

SUPERINTENDENT

J. MacGOVERN
TIMEKEEPER

A-27

145a

DEFENDANT'S EXHIBIT K

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 2 YANKEE

DAILY WORKING REPORT

S/S LBAGLE

MON.
DATE 11-5-73

SERVICE

EOG.
DIS.

VOYAGE 7 IN

PIER 3 PA

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Gene Net
2		8-9:30A	DISCHARGING	1 6/12					
3		9:30-10:30A	—"—	2					
5		8-12N 1-2P	—"—	5					
			MAN HOURS						
		S.T.	215 6/12 TOTAL						
			Total	9					9

Approved

SUPERINTENDENT

TIMEKEEPER

A-27

DEFENDANT'S EXHIBIT K

UTS Form MH-SA

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 1

DAILY WORKING REPORT

S/S I.BAGUE

MM. DATE 11-5-73

SERVICE

LDG. DIS.

VOYAGE 8 Our

PIER 3.Ph

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Gener. Net
2		7¾-12 n 1-9 p	LOADING	6 6/12	4				
3		10¾-12n 1-9 p	—"—	5 6/12	4				
3		8-12n 1-9 p	—"—	5	4				
4		8-12n 1-9 p	—"—	5	4				
4		8-12n 1-9 p	—"—	5	4				
5		2-9 p	—"—	3	4				
4F	21	8-3:25 A	SBy. Crew Open Hatch	5/12			5/12		
3A-4F	22	1-1:25 p	SBy. Cranes Out	10/12			10/12		
4F	21	3:30-9	SBy. Crane Out				6/12		
			MAN Hours						
		S.T.	844 6/12						
		O.T.	387						
		N.H.	129						
			1360 6/12 - TOTAL						
			Total	39	24		19/12		61 3/12

Approved

SUPERINTENDENT

JM-GOVERN TIMEKEEPER

A-27

DEFENDANT'S EXHIBIT K

UTS Form #M-5A

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 2

DAILY WORKING REPORT

S/S BAGLIE

DATE TUES 11-6-73

SERVICE

LDG. / DKS.

VOYAGE R OUT

PIER 3 FA

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Gener Net
2		8-12M 1-5P	LOADING		8				
3					5				
3					8				
4					5				
5					5				
			MAN HOURS						
		O.T.	860 - TOTAL						
			Total		40				40

Approved

SUPERINTENDENT

TIMEKEEPER

A-27

DEFENDANT'S EXHIBIT K

UTS Form #M-5A

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 3

DAILY WORKING REPORT

S/S I. BAGLIE

WED - DATE 11-7-73

SERVICE

LOG. ~~039.~~

VOYAGE 8 out

PIER 3 C.A.

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Gener. Net
2		8-12 N 1-6 P	LOADING	8	1				
3		8-12 N 1-6 P	— " —	8	1				
3		8-12 N 1-6 P	— " —	8	1				
4		8-12 N 1-6 P	— " —	8	1				
5		8-12 N 1-6 P	— " —	8	1				
4	21	3-4 P	SBY - TEST H/L CRANE BY HOISTING CWT + CHECKING PAINT	1			1		
4	21	1.30 P 4-4.20 P	RELOAD OPC/FRT. DISCHGD	2 6/12		2 6/12			
3A	21	4-4.30 P	" " " "	6/12		6/12			
3F	21	4-4.30 P	SBY - AWAIT CARGO	6/12			6/12		
			MAN HOURS						
		S.T.	848						
		O.T	106						
			954 - TOTAL						
			Total	40	5	3	1 6/12		40 6/12

Approved

SUPERINTENDENT

J. McGOVERN
TIMEKEEPER

A-27

DEFENDANT'S EXHIBIT K

UTS Form #M-5A

UNIVERSAL MARITIME SERVICE CORP.

REPORT # 44

DAILY WORKING REPORT

S/S LBAGUE

THUR. DATE 11-8-73

SERVICE

LDG. / DIS.

VOYAGE 8 OUT

PIER 3 PA

Hatch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		Gene Hr
2		8-12N	LOADING	4					
3		8-12N 1-6P	—"—	8	1				
4		8-12N 1-6P	—"—	8	1				
5		8-12N 1-6P	—"—	8	1				
5	21	9-10A	WISCH. CALL CARGO PREVIOUSLY LOADED PER INST.	1		1			
6	21	2-4:30P	LOAD MAIL	2 6/12		2 6/12			
			MAN HOURS						
		ST.	588						
		O.T	64						
			652 - TOTAL						
			Total	28	3	3 6/12			27 6/12

Approved

SUPERINTENDENT

J. McGOVERN
TIMEKEEPER

A-27

DEFENDANT'S EXHIBIT K

UTS · Form #M-5A

UNIVERSAL MARITIME SERVICE CORP.

REPORT No. 5 FINAL

DAILY WORKING REPORT

S/S I.BAGUE

DATE FRI. 11-9-73

SERVICE LDG. / DISC.

VOYAGE 8 OUT

PIER 3 EA

Stch	No. Men	Time	Activity	Gross Hrs. S/T	Gross Hrs. O/T	XL Hr.	DET Hrs.		General Net
3		8-11A	LOADING	3					
			MAN HOURS						
		S.T.	63 - TOTAL						
			Total	3					3

Approved

SUPERINTENDENT

TIMEKEEPER

A-27

DEFENDANT'S EXHIBIT O.

GRANCOLOMBIANA (NEW YORK), INC. NEW YORK, N. Y

HATCH TALLY

Port CAHLA O Pier 3-PD

Dock {10-31 ST.} Started

Lighter Finished

Vessel 1 BAGUIZ Date 11-5-73

DOCK RECEIPT	COMMODITY		AMOUNT	# WEIGHT
8077	RESIN	SKIDS	21	42735
8035	PTS	CTN	5	315
8105	DENTAL GOODS	BX	1	434
8021	PTS	CTN	4	710
8044	STAINS	BX	17	1200
8045	FLAVORING	1-DR	9	1750
8086	PTS	CTN	12	358
8025	CHEM	CTN	134	5228
8037	CHEM	1-DR.	2	238
8000	PTS	BX	1	790
8038	PTS	CTN	14	1183
8087	PTS	SKID	1	1760
8043	CHEM	CTN	1	195
8040	CREAM	1 DR.	10	1100
		TOTAL		
		CHECKER		

Stowed #3-L-H.FW OFF SHORE

Page No. F 25711

GPT. NO. 10
EPCO 800 BOOKS

True Juice

DEFENDANT'S EXHIBIT O

GRANCOLOMBIANA (NEW YORK), INC. NEW YORK, N. Y

HATCH TALLY

Port CALHO Pier 3-P19

Dock 10-31 Started

Lighter Finished

Vessel IBAGUE Date 11-5-73

DOCK RECEIPT	COMMODITY		AMOUNT	WEIGHT
8100	MACH	C/S	PL-1	5360 #
8100	"	"	PL-1	2810
8031	"	"	3	13915
8014	PTS	C/S	3	13395
8063	PTS	C/S	1	576
~~8076~~		~~SKIDS~~		
8060	CABINET	BX	1	1350
8052	PTS	C/S	1	270
8066	PTS	C/S	8	704
8054	PTS	C/S	5	3225
8056	PTS	SKIDS	3	4075
8042	HOSP SUPP	C/S	6	3825
8044	PTS	C/S	63	1395
8062	TUBES	BX	4	4192

Stowed #3-K H.FW TOTAL

OFF-SHORES CHECKER

Page No. F 25709

OPT. NO. 16
EPCO 800 BOOKS

DEFENDANT'S EXHIBIT P.

GRANCOLOMBIANA (NEW YORK), INC. NEW YORK, N. Y.

HATCH TALLY

Port B/VENT Pier 3-PA

Dock {10-31 ST} Started

Lighter Finished

Vessel BAGUIE. Date 11-6-73

DOCK RECEIPT	COMMODITY	AMOUNT	WEIGHT #
12	Rolls PAPIER	164	142,165
	THE ABOVE PAPIER		
	ON 34 PLTS		
	#3-L-H. F-W	TOTAL	
Stowed	P/S BIDE	CHECKER	

Page No. F 2566 GUAR

OPT. NO. 16

EPCO 800 BOOKS

154a

DEFENDANT'S EXHIBIT Q.

UNIVERSAL TERMINAL & STEVEDORING CORP.

ONE BROADWAY · NEW YORK, N. Y. 10004

CABLE: UNIVTERM NEWYORK TEL. (212) 269-5121

Mr. Dawson

January 5, 1968

Grancolombiana, (new York), Inc., General Agent
Flora Mercante Grancolombiana, S. A.
79 Pine Street
New York, New York 10005

Attention: Mr. G. F. Kritzler
Treasurer

Gentlemen:

We acknowledge your letter of January 3, Ref. ACC-40030.

In our review of the contracts which you have had with American Stevedores, Inc. we too have noticed that there were arrangements in the agreements to take care of vessels placed on the outside; we will be pleased to assume the performance of that contract, also, as we have the performance of the work under the principal contract between your Company and American Stevedores, Inc.

Very truly yours,

A. Wypler

A. Wypler
Executive Vice President

AW/t

DEFENDANT'S EXHIBIT O

UNIVERSAL TERMINAL & STEVEDORING CORP.
ONE BROADWAY · NEW YORK, N. Y. 10004
CABLE: UNIVTERM NEWYORK TEL. (212) 269-5121

December 27, 1967

Mr. Matthew J. Flynn
Grancolombiana (New York) Inc.,
General Agent
FLOTA MERCHANTE GRANCOLOMBIANA
79 Pine Street
New York, New York 10005

Dear Mr. Flynn:

This is to confirm our various conversations the past two months regarding terminal and stevedoring operations for Grancolombiana at Pier 3 - P. A. Brooklyn.

American Stevedores, Inc. effective as of November 1, 1967 assigned all of its rights under its contract with you to UT&S Corp. UT&S Corp. agrees that payment for services rendered subsequent to November 1, 1967 shall be at the rates heretofore charged by American Stevedores, Inc. It is further agreed that the arrangement for stevedoring and terminal services between UT&S Corp. and Grancolombiana is terminable by either party on 30 days written notice.

Please indicate your accord with the foregoing by signing and returning the enclosed extra copy of this letter.

Yours very truly,

A. Wypler

Arthur A. Wypler
Executive Vice President

Enclosure - 1

Copy of letter FLOTA MERCANTE GRANCOLOMBIANA, S.A.
GRANCOLOMBIANA (NEW YORK) INC., General Agent

Agreed to by _____ Treasurer Date January 2, 1968

DEFENDANT'S EXHIBIT Q

TRANSPORTADORA GRANCOLOMBIANA, LTDA.

OCEAN FREIGHT CARRIERS FOR COLOMBIA, ECUADOR VENEZUELA

52 WALL STREET • NEW YORK 5, N.Y.

TELEPHONE WHITEHALL 3-7207

No. OPER. # 812

January 20, 1954

American Stevedores Inc.
90 Broad Street
New York 4, New York

RE: GENERAL STEVEDORING AGREEMENT
AND TERMINAL STEVEDORING AGREEMENT.
AMENDMENT AND TERMINATION CLAUSE.

Dear Sirs:

In connection with Point #2, of our letter agreement OPER. 3808, dated March 3, 1953 that reads:

> "To include an expiration term of one year to our present agreements, to count commencing March 1, 1953 and to be extended automatically for equal yearly periods unless either party indicates in writing at least 30 days prior to each expiration date, his intention to cancel it at the date of such expiration."

please be notified that - it is the intentions of our Principals, FLOTA MERCANTE GRANCOLOMBIANA, S. A., to replace this Clause, as of March 1, 1954 by the original clause contained in our agreements above mentioned; i. e.,

> "Amendment and Termination: This agreement may be modified or amended by mutual consent of the parties. It may be terminated at any time by either party upon thirty (30) days' notice in writing, addressed to the office address of the other party as the same appears in the preamble to this agreement, provided that, in the event of breach by either party of any of the terms or conditions of this agreement on its part to be performed, the other party may terminate this agreement, upon only one week's written notice similarly given, and provided, further, that notwithstanding any termination the Contractor shall continue to be responsible for the loading and discharging of any cargo which the Contractor is handling on the effective day of such termination. Termination of this agreement shall not affect or relieve either party of any liability or obligation that may have accrued prior thereto."

DEFENDANT'S EXHIBIT Q

If you are in agreement with the above amendment, please sign the original of this letter and return same to us, keeping the attached copy for your files.

Very truly yours,

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

BY: TRANSPORTADORA GRANCOLOMBIANA, LTDA., Agent

Alfonso Peñaranda, General Manager
GULF-ATLANTIC DIVISION

JJB/ra
CFER. NO. 2122
cc: Auditor
Central file
Enclosure

ACCEPTED:
AMERICAN STEVEDORES, INC.

O. Blair Chiarelle
Vice President

DEFENDANT'S EXHIBIT Q

AGREEMENT entered into this 2nd day of March, 1950 by and between TRANSPORTADORA GRANCOLOMBIANA, LTDA., a Colombian limited liability company, authorized to do business in the State of New York, having its office at 52 Wall Street, City and State of New York, acting as agent for FLOTA MERCANTE GRANCOLOMBIANA, S.A., a Colombian corporation with its principal place of business in the City of Bogota, Republic of Colombia, hereinafter called "the Operator", and AMERICAN STEVEDORES, INC., a New York corporation with its office at 90 Broad Street, City and State of New York, hereinafter called "the Contractor":

W I T N E S S E T H :

That in consideration of the payment of the rates designated below, and subject to the terms and conditions hereinafter mentioned, the Contractor agrees to stevedore the loading and discharging in the Port of New York, N.Y., of all the vessels owned, managed, operated, chartered, or otherwise controlled by the Operator, and perform such other services as may be stated, commencing March 4, 1950.

1. Manner of Performance: The work called for hereunder is to be performed to the satisfaction of the Operator and is to conform, in all respects, with such rules, regulations and procedures as may, from time to time, be specified by the Board of Underwriters.

2. Rates: The rates specified below are flat rates for the entire cargo space of the steamer, and correspond to manifest ton of 2,000 lbs., or 40 cubic feet, except where otherwise stipulated:

COMMODITY RATES

A) Discharging

Cargo in bags	0.175	per bag
Hides, dry - loose	91.50	" 1000 hides
Balsa Wood	0.62	" measurement ton
General Cargo	2.41	" weight ton

DEFENDANT'S EXHIBIT Q

B) Loading

Automobiles and Trucks	
Boxed, unboxed or knockdown	0.93 per measurement ton
Cargo in Bags	
Flour, sugar, w[illegible]t, etc.	2.08 " weight ton
Cement	2.13 " " "
Tinplate	2.08 " " "
Pipe	2.32 " " "
Pipe	2.06 " measurement ton
Potatoes (bags and/or crates)	2.47 " weight ton
Empty Bottles	3.3[illegible] " " "
Steel	
Wire	2.41 per weight ton
Angles, beams and piling	2.37 " measurement ton
Bars and billets	2.47 " weight ton
Sheets and plates	2.47 " " "
Rails	2.47 " " "
Structural	2.78 " measurement ton
Structural Piling and Beams over 40' long	2.78 per weight or measurement ton.
Machinery - crated or skidded	2.47 per measurement ton
Machinery - " " "	2.32 " weight ton
Lumber	
Dressed	2.06 per 500 board feet
Poles and piling	2.32 " 50 lineal feet
Creosoted Piles	2.57 " 50 " "
General Cargo	2.32 per weight ton
General Cargo	2.57 " measurement ton

The rates specified herein include Social Security and Unemployment Tax, Vacation Allowance, Welfare Plan Fund, N.Y. Disability Benefits Law and Pension Plan Fund, as presently payable by the Contractor, Workmen's Compensation Insurance, Public Liability and Property Damage Insurance.

3. Adjustments of Tonnages: Adjustments of tonnages upward or downward used for billing commodity rates will result occasionally from freight correction notices. If ninety days after sailing such adjustments amount to more than five tons (net), the Contractor and Operation shall adjust the charges for stevedoring for such differences.

DEFENDANT'S EXHIBIT Q

4. Type of Vessels: The stevedoring rates specified in this agreement apply to cargo vessels including those vessels with minimum passenger accommodations.

5. Commodity Rate Inclusions: As part of the foregoing specified rates, the Contractor agrees to include in the commodity rates the following described services:

a-Transport Contractor's gear and equipment to and from the pier where the vessel is berthed, excepting locations that are inaccessible to motor trucks.

b- Provide all necessary stevedoring labor, including winchmen, hatch tenders, tractor and dock crane operators, also foremen and such other stevedoring supervision as are needed for the proper and efficient conduct of the work.

c- Adjust rigging of booms and guys, etc. at hatches where work of discharging and/or loading will be conducted and unrigging when completed, also removing and replacing beams and hatch covers.

d- Discharge cargo from or load cargo into vessels' holds, tween decks, on deck, shelter or bridge spaces, deep tanks, cargo lockers and lazarettes, also temporary bunker spaces, but excluding fore and aft peaks and bilges.

e- Shift gangs as required between inshore and offshore, also from lower to upper floor (or vice versa) on double deck piers. Shift lighters into working position after they have been placed alongside of vessel, when this can be done without tugs.

f- Sort (by longshoremen) and stack cargo man high on pier upon discharge of vessel or break down cargo on pier upon loading of vessel.

g- Perform such long trucking as required within limits of pier where vessel is berthed.

DEFENDANT'S EXHIBIT Q

h- Load and lay dunnage boards (except freighted dunnage lumber) as required during loading for proper stowage of cargo.

i- Work two gangs simultaneously, in hatches when required and when practical to do so, provided necessary additional booms, falls and winches are supplied by vessel or from shore facilities.

6. Extra-Labor Services: Extra labor shall be performed only with the approval of such employees of the Operator as may be designated in writing.

When required to supply extra labor, the Contractor will render its charges therefor upon the basis of the labor cost incurred, plus 10% as Contractor's compensation for Overhead and Profit; corresponding Compensation Insurance and Public Liability Insurance, shown specifically in each case, Social Security and Unemployment Tax, all based on the straight-time wages; and Vacation Allowance, Welfare Plan Fund, N.Y. Disability Benefits Law and Pension Plan Fund, based on the number of working hours, for the following services:

a-(1) Handling ship's lines and gangways

(2) Cleaning ship's holds

(3) Bolting and unbolting tank lids

The above extra labor is usually performed by shore gang or mechanics labor and the insurance code is 6872 or 6.02%.

b-(1) Carpenter or coopering of any nature on board and/or pier.

(2) Lashing and shoring cargo

(3) Handling and placing flooring or timbers for heavy lifts or for the use by carpenters.

The above extra labor is usually performed by shipwrights labor and the insurance code is 5403 or 5.47%.

c-(1) Discharging excess dunnage or debris

(2) Loading or discharging ships stores, material or equipment, mail, baggage, specie, bullion, livestock animals,

DEFENDANT'S EXHIBIT Q

live poultry and birds, and refrigerated cargo such as bananas, etc.

(3) Services of Harbormaster for the berthing and unberthing of lighters.

(4) Batten down hatches when called upon to do so upon completion of the vessel.

(5) Rigging and unrigging heavy lift booms.

The above extra labor is usually performed by longshoremen and the insurance code is 7309 or 12.05%.

d- Assistance in the receiving or delivery of cargo.

The above extra labor is usually performed by freight handlers, and the corresponding insurance is No. 7360, or 5.47%.

e- Tiering cargo on pier above man high upon discharge of vessels.

This labor is usually performed by longshoremen, but is considered freight handling and as such takes the insurance code 7360 or 5.47%.

f- In supplying other extra labor services not mentioned above when authorized, the following insurance codes will be applied:

Labor performed:

By longshoremen on pier, Code 7309 - 12.05%;
" " " vessel, Code 7309 - 12.05%;
" shipwrights on pier, Code 5403 - 5.47%;
" " " vessel, Code 5403 - 5.47%;
" freight handler on pier, Code 7360 - 5.47%;

7. Rental and Rigging and Unrigging Hatch Tents: When required to use hatch tents, the Contractor will charge $20.00 per tent to represent the initial rigging and final unrigging combined and $15.00 per day for the rental of such hatch tent if supplied by the Contractor, and no charge will be made for intermediate rigging or unrigging of the tent during the working of the vessel.

8. Income from Handling Lighters and Cars: The Contractor shall collect and retain its customary charges for labor services in connection

DEFENDANT'S EXHIBIT Q

with the loading and unloading of railroad cars, lighters, barges and scows. Overtime differential (plus taxes and insurance) for such services is to be billed to the Operator when such work is performed in overtime periods upon instruction of the Operator.

9. Equipment: The ship is to supply booms, adequate winches, in good order and with sufficient steam or current for their efficient operation; blocks, topping lifts, guys; wire or rope falls of sufficient length and strength, hatch tents, lights for night work; tugs; derricks or cranes for such heavy lifts as exceed the capacity of the ship's gear, and cranes in the absence of ship's winches. The ship is also to supply dunnage, paper and all material for shoring and lashing cargo as well as grain bags and separation cloths.

The Contractor is to supply all other cargo handling gear and equipment, such as hooks, pendants, pallets, savealls, nets, trays, bridle chains and slings (except slings for heavy lifts when hoisted by heavy lift floating or shore derrick) also hand trucks, mechanical trucks or tractors, fork trucks, also dock tractor cranes as needed for efficient stevedoring work and assistance in the receiving and delivery of cargo and extra labor, and no charges for their use or maintenance will be charged to the Operator.

10. Insurance: The Contractor agrees to carry Workmen's Compensation Insurance for the unlimited protection of its employees under State and Federal laws, and also Public Liability Insurance, covering the interest of the Operator, for the protection of third parties injured by its employees, such public liability insurance to be in the amount of $1,000,000.00 for death or injury of one person and for death or injury of more than one person in a single accident, and the Contractor agrees further to provide satisfactory evidence of said insurance to the Operator.

DEFENDANT'S EXHIBIT Q

All insurance charges apportioned to the Operator for any of the extra-labor services shall be computed at the actual rates paid by the Contractor, but in no event more than the Manual Insurance Rates in effect and as published by the Insurance Rating Board, and the Contractor shall refund to the Operator the proportionate part of any return or dividend which it may receive periodically from its insurers on the amount of premiums paid.

11. Responsibility for Damage and Loss: The Contractor will be responsible for damage to the vessel, its equipment, piers, docks, wharfs, sheds, lighters, barges and any other property owned or leased or in possession of or being used by the Operator and for damage to or loss of cargo through its negligence, or that of its servants, agents or employees. The Contractor agrees to carry Property Damage Insurance covering the aforesaid liability in an amount of $2,000,000.00 (with no deductible amount) and to furnish the Operator with satisfactory evidence thereof.

12. Detentions, Waiting, Lay Time: Whenever work is interrupted after starting and detentions of not over 20 minutes duration occur, the Contractor will make no charge for reimbursement therefor. Should such detention time exceed 20 minutes duration, the Contractor will charge for the full detention time on the basis of labor cost plus Compensation Insurance and Public Liability Insurance (Code No. 7309 or 12.05%), Social Security and Unemployment Tax, Vacation Allowance, Welfare Plan Fund, N.Y. Disability Benefits Law and Pension Plan Fund only. When men are employed and unable to work through causes beyond the Contractor's control, or when men are to be paid for a minimum working period in accordance with the wage agreement, the cost of such waiting or idle time will be charged for by the Contractor at labor cost plus corresponding Compensation Insurance and Public Liability Insurance and Social Security and Unemployment Tax only.

13. Overtime: When overtime hours are worked, the additional

DEFENDANT'S EXHIBIT Q

wages thereby incurred and paid to all labor and other stevedoring personnel so employed, will be charged for by the Contractor at labor cost plus corresponding Compensation Insurance and Public Liability Insurance and Social Security and Unemployment Tax only.

In the event that under any Government Order or final determination by a court of competent jurisdiction, labor is required to be paid wages in excess of the wages paid under the Federal Fair Labor Standards Act as presently interpreted throughout the port, such wages plus insurance and social security and unemployment taxes, together with any additional amount other than wages for which the Contractor may be legally liable under the Act, shall be reimbursed to the Contractor by the Operator at cost.

14. Travel Time and Transportation: When the Contractor is required to work at locations where travel time is required to be paid the men, in accordance with the wage scale, such travel time will be charged for at labor cost, plus insurance. When vessels are worked in the streams or other places where means of transportation for the men are required or meal allowances must be paid in accordance with the wage agreement, any expense so incurred will be charged for at cost.

15. Strikes, etc.: In the event of strikes, lockouts, union disputes or other labor difficulties, the Contractor will, if able to work, do so upon a basis of cost of labor plus 10% and insurance, in lieu of rates specified, unless notified by the Operator that no work is to be performed.

16. Increase or decrease in Wages: All rates specified are based on and subject to the employment of present longshore labor at the wage scale and working conditions existing in the port in the month of March, 1950, under the International Longshoreman's Association Agreement. In the event of an increase or decrease in such wage scale or change in the present longshore labor or working conditions, the rates specified herein

DEFENDANT'S EXHIBIT Q

shall, as a consequence, be proportionately increased or decreased, in accordance with the computations published by New York Shipping Association in this connection.

17. Rehandling or Shifting of Cargo: The rates specified herein apply to one handling of cargo. When rehandling, resorting or shifting of cargo is necessary through no fault of the Contractor, the time required for such work will be charged for by the Contractor on the basis of labor cost plus 10% as Contractor's Compensation for Overhead and Profit; Compensation Insurance and Public Liability Insurance (Code No. 7360 or 5.4%, or Code No. 7309 or 12.05%, as the case may be), Social Security and Unemployment Tax, Vacation Allowance, Welfare Plan Fund, N.Y. Disability Benefits Law and Pension Plan Fund. If the use of machines is necessary for such rehandling, resorting or shifting of cargo, or for long trucking, the Contractor will charge the Operator at the rate of $1.50 per machine per hour.

18. Damaged Cargo: When handling cargo damaged by fire, water, oil, etc., and where such damage causes distress or obnoxious conditions, or in all cases where the men are called upon to handle cargo under distress conditions, the Contractor's charges are to be based on the labor cost in accordance with the International Longshoremen's Association Agreement, plus 10% as Contractor's Compensation for Overhead and Profit; Compensation Insurance and Public Liability Insurance (Code No. 7309 or 12.05%), Social Security and Unemployment Tax, Vacation Allowance, Welfare Plan Fund, N.Y. Disability Benefits Law and Pension Plan Fund in lieu of the rates specified herein, together with the cost of the gear destroyed and the cost of the equipment for the protection of men as may be required.

19. Condition of Cargo: If the condition of the cargo or packages is other than in customary good order, thereby delaying prompt handling, special arrangements shall be agreed upon in lieu of the rates herein specified.

DEFENDANT'S EXHIBIT Q

20. Labor for Heavy Lift Cargo: When heavy lift cranes or derricks other than vessel's equipment are hired by the Operator to load or discharge cargo, the only compensation to the Contractor for its assistance in the handling of such cargo shall be at the rate of 75% of the corresponding commodity rate as specified in Article 2 of this agreement, except in the case of handling a railroad locomotive when the Contractor shall be reimbursed upon the basis of the labor cost incurred, plus 10% as Contractor's Compensation for Overhead and Profit; Compensation Insurance and Public Liability Insurance (Code No. 7309 or 12.05%); Social Security and Unemployment Tax, Vacation Allowance, Welfare Plan Fund, N.Y.Disability Benefits Law and Pension Plan Fund.

21. Ammunition and Explosives: Are not included in this agreement.

22. Acts of God, War, Etc.: No liability shall attach to the Contractor, if the terms of this agreement cannot be performed, due to the acts of God, War, Governments, Fire, Explosion, or Civil Commotion.

23. Amendment and Termination: This agreement may be modified or amended by mutual consent of the parties. It may be terminated at any time by either party upon thirty (30) days' notice in writing, addressed to the office address of the other party as the same appears in the preamble to this agreement, provided that, in the event of breach by either party of any of the terms or conditions of this agreement on its part to be performed, the other party may terminate this agreement, upon only one week's written notice similarly given, and provided, further, that notwithstanding any termination the Contractor shall continue to be responsible for the loading and discharging of any cargo which the Contractor is handling on the effective day of such termination. Termination of this agreement shall not affect or relieve either party of any liability or obligation that may have accrued prior thereto.

DEFENDANT'S EXHIBIT Q

IN WITNESS WHEREOF, the parties have signed this instrument at New York City this 2nd day of March, 1950.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

BY: TRANSPORTADORA GRANCOLOMBIANA, LTDA., Agent

Witnesses:

By: Herbert O. Jason
Manager of Operations

AMERICAN STEVEDORES, INC.

G. Blair Chiarello
Vice-President

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 2nd day of March, 1950, before me personally came G. BLAIR CHIARELLO, to me known, who, being by me duly sworn, did depose and say that he resides at 115h 83rd Street, Brooklyn, New York; that he is the Vice-President of AMERICAN STEVEDORES, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Albert M. Herrmann
Notary Public

ALBERT M. HERRMANN
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Cert. Filed in New York County Clerk's
and New York [illegible]
Commission Expires March 30, 1951

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 2nd day of March, 1950, before me personally came HERBERT O. JASON, to me known, who, being by me duly sworn, did depose and say that he resides at 53 West 83rd Street, New York City; that he is the Manager of Operations of TRANSPORTADORA GRANCOLOMBIANA, LTDA., the corporation described in and which executed the foregoing instrument as agent of FLOTA MERCANTE GRANCOLOMBIANA, S.A.; that Transportadora

DEFENDANT'S EXHIBIT Q

Grancolombiana, Ltda. is a Colombian corporation and as such has no corporate seal; that he executed this agreement as duly authorized representative of Transportadora Grancolombiana, Ltda.

Notary Public

ELLIOTT M. HERRMANN
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Cert. Filed in New York County Clerk's
and New York Register's Office
Commission Expires March 30, 1[illegible]

DEFENDANT'S EXHIBIT R.

Form 585—Rev. 1/66—Printed and Sold by UNZ & CO., Inc., 24 Beaver St., New York, N. Y. 10004—U51353

(SPACES IMMEDIATELY BELOW ARE FOR SHIPPERS MEMORANDA—NOT PART OF DOCK RECEIPT)

DELIVERING CARRIER TO STEAMER: PC-BAR#4299 & BAR#4230 TO NEW YORK DOCK RLY.,ON FLOAT #14 ON OCT/27/73 AT 11 A

CAR NUMBER—REFERENCE

FORWARDING AGENT—REFERENCES: G. A. LOPEZ FORW. & SHIPPING CO.,INC. FMC-147

EXPORT DEC. No. 72

DOCK RECEIPT

NON-NEGOTIABLE

OCT/30/73

SHIPPER MOLLER & ROTHE (EXPORT) CORP., 99 PARK AVENUE, NEW YORK, N.Y. 10016

SHIP: CIUDAD DE IBAGUE | VOYAGE NO. 1 1/2 | FLAG: CO. | PIER: 3, PORT AUTHORITY, BROOKLYN, NEW YORK | PORT OF LOADING

FOR PORT OF DISCHARGE (Where transferred or transshipped en carrier): BUENAVENTURA -

For TRANSSHIPMENT to (If goods are to be transhipped or forwarded as part of discharge)

PARTICULARS FURNISHED BY SHIPPER OF GOODS

MARKS AND NUMBERS	No. of PKGS.	DESCRIPTION OF PACKAGES AND GOODS	MEASUREMENT	GROSS WEIGHT
CARVAJALES 21800 CALI VIA BUENAVENTURA NO.1/164	164-ROLLS:	NEWSPRINT PAPER (JUMBO)	64485.2 (Kilos)	142,163#

CAR # 4299-
(13) ROLLS - 1/4 INCH CUT
(4) " - 1/2 " "
(3) " - " "

4387/0

" CARGO WILL BE DELIVERED BY NEW YORK DOCK RAILWAY ON OCT/31/73 "

(CARS NOS. PC-BAR#4299 & BAR#4230 ON FLOAT #14, ON OCTOBER 27/73 AT 11 A.M.)

CAR # 4230
6 ROLLS - 1/4 Cut

WATCH FOR CUTS

RAIL

DIMENSIONS AND WEIGHTS OF PACKAGES TO BE SHOWN ON REVERSE SIDE

UNLOADED

DELIVERED BY: LIGHTER / TRUCK

RECEIVED THE ABOVE DESCRIBED MERCHANDISE FOR SHIPMENT AS INDICATED HEREON, SUBJECT TO ALL CONDITIONS OF THE UNDERSIGNED'S USUAL FORM OF DOCK RECEIPT AND BILL OF LADING COPIES OF THE UNDERSIGNED'S USUAL FORM OF DOCK RECEIPT AND BILL OF LADING MAY BE OBTAINED FROM THE MASTER OF THE VESSEL, OR THE VESSEL'S AGENT

" GRANCOLOMBIANA "

AGENT FOR MASTER

BY (KH) RECEIVING CLERK 11/1/73

ARRIVED— DATE..... TIME.....

UNLOADED— DATE..... TIME.....

CHECKED BY.....

PLACED IN SHED ON DOCK LOCATION.....

DATE.....

DEFENDANT'S EXHIBIT R

SHIPPERS ARE REQUESTED TO FILL OUT AS BELOW

WHICH WILL ENABLE US TO VERIFY CORRECTNESS OF SAME AND AVOID ALL DISPUTES
EXCEPT IF ANY ONE PACKAGE WEIGHS 4,480 LBS. OR OVER, THEN
WEIGHT MUST BE MENTIONED SEPARATELY.

MARKS	No. of Pkgs.	MEASUREMENTS Length Ft.	Length In.	Breadth Ft.	Breadth In.	Depth Ft.	Depth In.	Total Cubic Ft.	Total Cubic In.	Gross Weight
ST 8 00 PM		3	2	3	2	2	8			NOTATION
FIN 11 30 AM										(13) ROLLS 1/4" CUT
N.Y. Dock										(4) -"- 1/2" CUT
RAIL										3 -"- 1" CUT
CAR				Rec (83) ROLLS						
~~BAR 5349~~	4299									
										NOTATION
BAL ~~5349~~ 4280										(6) ROLLS 1/4" CUT
ST 11 30 AM										
FIN 3 30 PM										TOT CU 4387/0
				Rec (87) ROLLS						
				11/5/73						
						Totals				

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New York

375—Affidavit of Service The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

NEW YORK SUPREME COURT APPELLATE DIVISION DEPARTMENT

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MUNOZ

VS

FLOTA MERCHANTE GRANCOLOMBIANA

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

ROBERT FORD being duly sworn,

deposes and says that he is over the age of 21 years and resides at 755 Hancockst, Bklyn NY

That on the 10th day of JAN 1977 at

he served the annexed defendant-appellant's brief and appendix upon

ZIMMERMAN & ZIMMERMAN, 160 BROADWAY, NY, NY

in this action, by delivering to and leaving with said attorneys

three copies of the brief and of the appendix true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 10th day of JAN 1977

Robert L. Ford

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977

DEFENDANT'S EXHIBIT K

Flota Mercante Grancolombiana, S. A.

STOWAGE PLAN — PLANO DE ESTIBA

Ciudad de Ibague — Voy. 8
From / Desde: New York — To / Hacia: Matarani
Via Porta / Por Puertos de: Santa Marta, Barranquilla, Cartagena, Cristobal, Buenaventura, Manta, Guayaquil, Paita, Callao
Sailed / Zarpo: 19 Time / Hora

Commenced Loading / Empezo a Cargar: 11-5-73 Pier 3 P.A.B.
Finished Loading / Termino de Cargar: 11-9-73 Pier 3 P.A.B.
Commenced Loading / Empezo a Cargar:
Finished Loading / Termino de Cargar:

Cargo / Carga	New York	2064	
Mail	405		
Cargo / Carga	Miami	769	
Cargo / Carga	Jacks	105	
Cargo / Carga	Phila	569	

Draft - Arriving / Calado - Llegada
Fwd. / Proa 22 06
Aft / Popa 24 08
Mean / Centro 23 06

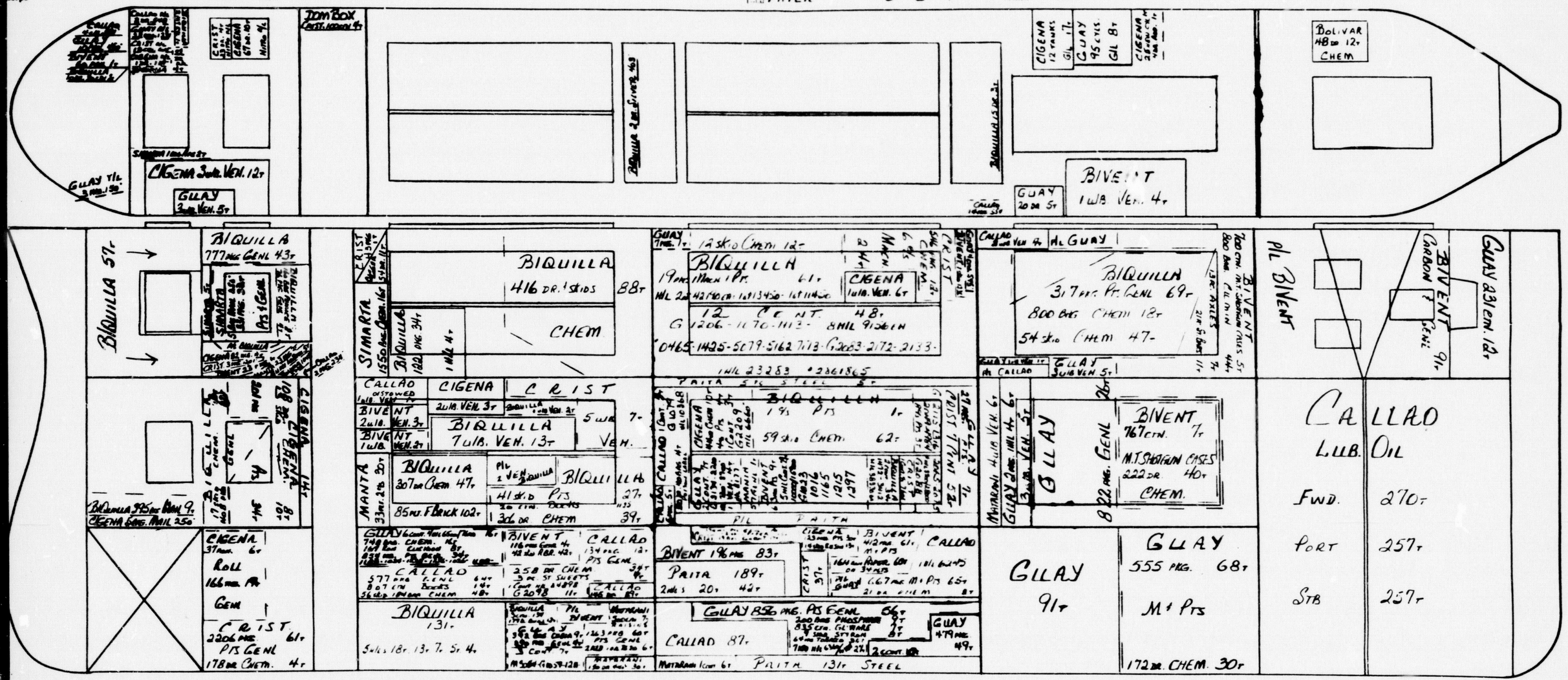
Draft - Leaving / Calado - Salida
Fwd. / Proa 26
Aft / Popa 26
Mean / Centro 26 18 18

FORT MARKS — MARCAS DE PUERTO

Name of Port / Nombre del Puerto	Marks / Marcas
Miami - Jacks - Phila New York	——— — — —

COLOR CHART — MAPA DE COLORES

Color	Name of Port / Nombre del Puerto
RED	SIMATA - CURACAO, BOLIVAR
BLUE	BIQUILLA - PERUVIAN PORTS
PURPLE	CARTAGENA - BIVENTURA
GREEN	CRISTOBAL MANTA



NEW YORK — DISTRIBUTION OF CARGO — DISTRIBUCION DE LA CARGA

COMPARTMENTS / COMPARTIMIENTOS	SIMARTA TONS / TONELADAS	BIQUILLA TONS / TONELADAS	CIGENA TONS / TONELADAS	CRIST TONS / TONELADAS	BIVENT TONS / TONELADAS	MANTA TONS / TONELADAS	GUAY TONS / TONELADAS	BOLIVAR TONS / TONELADAS	CALLAO TONS / TONELADAS	MATARANI TONS / TONELADAS
1										
2		134	2		114		129		76	
3		218	60	142	159	1	156		187	80
4		168		7	48		87			
5	33	93	81	65	1	2	5	tons		
6	2	13					1			
TOTAL	35	626	143	214	322	3	378		263	80

MIAMI - JACKS - PHILA.

	UNBOXED TOTAL	C/SIMARTA	B/QUILLA	C/IGENA	CRIST	BIVENT	MANTA	GUAY	BOLIVAR	PAITA	CALLAO	MATARANI	TOTAL
			7	6		3		7			3	30	
	1					91		12	12				115
	379	2		3	17	4		116			4	6	150
	812	3		6	41	83		59		325	52	6	612
	577	4	16	327	14	3	30				30	30	451
	280	5	5		30	8		2					45
	16	6		60	6	1		1			126	42	70
TOTAL	2064	TOTAL	21	390	73	50	182	30	192	12	325	126	42	1443

REMARKS — OBSERVACIONES

UNBOXED	
BIQUILLA	1
CRIST	5
BIVENT	1
GUAY	4
TOTAL	11